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# **The Civic Theory**

BY

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With a Foreword

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To

MY UNCLE,

*Mohd Yasin Siddiqi Esqr.*

B. A. LL. B. (Alig), Advocate.



## FOREWORD.

Dr. Aziz's book on the Civic Theory is a companion volume to his "Salient Features of the New Constitution", specially designed to cover the syllabus for the Intermediate Examination in Civics. The treatment of the subject is more advanced and comprehensive than what is found in similar other works. Though primarily meant for Intermediate students, the book will, I am sure, form an interesting reading to a layman as well. Dr. Aziz has successfully attempted to make the subject of Civic Theory clear and concise, and has discussed political conceptions and general principles of state-organization in the light of Indian conditions.

I have no hesitation in recommending the book to those for whom it is meant.

MOHAMMAD HABIB,

B.A. (OXON) BAR-AT-LAW

Professor of History and Politics.



## PREFACE.

The following pages are based on my lectures that I prepared for my students of the Intermediate class in Civics. My primary aim in writing the book has been to provide the student with a clear, systematic and comprehensive treatment of the subject.

I acknowledge my debt to the authors of the various books written on the subject, specially of the more advanced works on Political Theory and Organization.

I cannot fail to express my gratitude to Professor Mohd. Habib, who has again been kind to his pupil by writing a foreword to this work.

M. AZIZ.

*Muslim University, Aligarh.*

.8, Dec., 41.

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## CHAPTER 1.

### MEANING, SCOPE AND UTILITY OF CIVICS.

#### Knowledge and Science.

As a matter of fact, human knowledge is or ought to be one, and science is a body of systematised knowledge. It seeks to study the natural phenomena through a process of observation, experimentation and classification. But for the convenience of study sciences have been classified into several branches. The three main divisions are - Physical, Biological and Social. The Physical Sciences deal with inanimate objects and natural phenomena, as for example, Physics, Chemistry, Geology and Astronomy. The Biological Sciences such as Zoology and Botany are concerned with animals and plants respectively. The Social Sciences treat of the various aspects of man's life in society.

### **Social Sciences.**

The principal Social Sciences may be described: Anthropology is the Science of human origins; Ethnology is concerned with human races and their characteristics; Sociology deals with the development of human society; Economics with the production and distribution of wealth; Social Psychology with human mind in relation to society; Ethics with the problem of human conduct; Political Science with the State and Government; Civics with the rights and duties of citizen; Jurisprudence is the science of law-making or legislation and History is a record of past events. Social Sciences are based not on experiment but on observation and as such seek to collect social facts and examine them carefully..

### **Interdependence of Sciences.**

A successful classification of sciences is not, however, possible: all sciences are so closely inter-related and interdependent that they cannot be held in water-tight compartments. Much less, the social sciences, which have a basic unity of their own. They study the various aspects of man's life from different points of view with the result that many problems remain common to them. Social life is a

complex whole, and inspite of divergence in its forms and institutions no one aspect can be studied without reference to the other.

### **Social Organization.**

There are many Social Sciences which deal with the life and activities of man in society. Human society, in its broadest sense, is the society of mankind. Society is, therefore, composed of a number of individuals. An individual, on the other hand, is a human being and a member of society. When a society is marked by a general organization and the establishment of a political authority, which is habitually obeyed by the inhabitants of a certain territory, it is called a state. Thus, a politically organised society of individuals forms the State, which conveys the idea of a superior authority and submission to that authority on the part of the individuals. An individual, who is a member of the State, is called a citizen. Some of the members of the State are entrusted with the charge of carrying on the administration of the territory, they are collectively known as the Government. Government, then, is the machinery of the State.

### **Meaning of Civics.**

Civics is derived from the latin word



'Civitas' or a city-state and 'Civis' meaning a citizen. Civics is, consequently, concerned with the citizen. It is, in other words, a theory of citizenship. A citizen is a member of the State, and enjoys rights both civil and political. Each State guarantees to its citizens the enjoyment of rights, and requires them to perform corresponding duties. Civil rights are such as appertain to civil Society and political rights are the political privileges, through the exercise of which the individuals share in the political authority of the State. Civics, therefore, is that part of Political Science, which is concerned with the rights and duties (both civil and political) of citizens. This definition is neither exhaustive nor conclusive, for it does not take into account the whole of a citizen's life. A mere study of the citizen's rights and duties does not constitute the entire social life of the individual. Society consists of a number of associations, and man's social life means his membership of the various associations. State is only one but an important and supreme association, and the relation of the individual with the State is only one aspect of the individual's life.

Practically, the subject-matter of Civics

covers even the thought and action of the individual. Civics, in the words of E. M. White, should be concerned with "everything (e. g., social, intellectual, economic, political and even religious aspects) relating to a citizen; past, present and future, local, national and human". In this sense, Civics is a very vast science and represents a very ambitious scheme. It is difficult to do justice to all the aspects of man's life, and the scope of Civics is to be purposely limited. Civics may, therefore, be defined as that Social Science which deals with the life of the individual as a member of several associations, of which he finds himself a member either by incidence of birth or by choice. Thus, an individual automatically becomes a member of the family, the State and the tribe by virtue of his birth in a certain locality and territory. The child after attaining the age of discretion may join other associations such as the Club. It is, with the life of the individual and his manifold activities as a member of several associations that Civics is concerned with. It deals with the rights and duties of men as members of society and determines their relation in dealing with one another and with the various forms of human

organization. Civics is, thus, the study of the Civic phenomena, Civic life of the individual and improvement of this life according to a Civic standard, which is the general well-being of the individual.

### **Civics as a Science.**

As stated before, Science is a body of systematised knowledge. It seeks to collect all the facts concerning a particular phenomenon, examines and classifies them and establishes between them a relation of cause and effect. It is concerned with the general principles or laws as they *are*. Civics also collects facts of social life, institutions and human activities, analyses, compares and classifies them in order to draw conclusions regarding the general tendencies of social behaviour. In this way, general principles or laws are formulated as to how human beings are likely to act under similar circumstances. Civics is, thus, a science, but a science in the making. It is imperfect in the sense that some statements of social tendency may be reduced to laws, but others cannot. But no law of Civics can be as exact as the law of a natural Science like Physics or Chemistry. Human knowledge is imperfect and human motives are complex and varied; a study of soci-

al sciences involves a treatment of the rules of conduct, which cannot be taken as mathematical truths. Social sciences deal with the social phenomena with reference to man; and exact science, are concerned with the natural phenomenon without any reference to man. Civics is, consequently, an inexact science.

### Civics as an Art.

An art always has some practical end in view; it seeks to achieve what is presumed as good and desirable and to avoid what is bad and undesirable. In this direction, it prescribes rules for action. Civics not only collects facts of social life, but has also a practical end in view. It has as its ideal a happy citizen in a healthy society, and determines methods to reach that goal by constant effort. It tells the individual how to lead a happy and healthy life, how to exercise one's rights and to perform one's duties and how to contribute to the general well-being of society. To quote Professor Geddés, "Civics is the application of social survey to social service." Thus, Civics is also an art.

Civics deals with the Civic phenomenon with special reference to social ideals and standards; it may be safely called a normative science. So

far as Civics is concerned with the study of social facts, their analysis and rules of human behaviour, it is a science, but not an exact science. When Civics deals with its practical end, it becomes an art; and as it examines the progress of social life according to the Civic standard, it is a normative science. It is, therefore, through various stages that Civics is an inexact science, art and normative science.

### **Relation to other Social Sciences.**

As already indicated, Civics is a social science, but there are many Social Sciences, which are concerned with the different aspects of human life and activity. But the facts of social life have a basic unity of their own, and one social science cannot be entirely separated from the other. They are closely connected and interdependent.

### **Civics and Sociology.**

Sociology is the science of social phenomena and as such forms a scientific study of the origin, growth and organization of human society. Social organization constitutes the development of groups and associations, their forms and functions, customs, laws and institutions, language, beliefs and ways of living, modes of thinking

and acting. Sociology, then, may be regarded as the parent science, dealing with all the phases of human society.

Civics is concerned with the Civic phenomena and its object is to secure the general well-being of the individual. To realise man's social well-being is only a part of the general scheme. The betterment of the individual's social life depends on a careful study of past social conditions, and to devise methods, in the light of modern experiences, to reach that goal. For this purpose, Civics has to study society in its manifold activities and, thus, it covers a part of the field of Sociology. An individual in order to be a good citizen must lead a decent and cultured life, which in its turn consists of good manners and customs. Sociology describes customs and manners, whether good or bad, and it is the function of Civics to teach how to eradicate evil and to substitute it by virtue. Civics takes social facts for granted and draws its own conclusions to better the social life of the individual.

Sociology is primarily concerned with society and indirectly with the individual and Civics directly with the individual and secondarily

with society. Sociology deals with the fundamental facts of social life, and Civic life is only a part of the sum-total of social life. Civics is much narrower in its scope and forms a part of Sociology in so far as it is concerned with the social aspect of man's life.

### **Civics and Political Science.**

Political Science is the Science of political phenomena. It deals with the State and Government, and is to be distinguished from that unfortunate word "Politics", which means a much discussed political or administrative topic of the day in a particular locality or country. Political Science is a historical investigation of what the State has been, what it is and what it ought to be — the past, actual and ideal State. Civics and Political Science are closely related, both have a similar origin. The Greeks called their city "Polis", and as each city was a State, "Polis" meant the State. From "polis" is derived the word Politics, which denoted the affairs of the city or State. The Romans used the words "Civitas" and "Civis" meaning city and citizen respectively. Civics, according to them, referred to the affairs of the Greek city-States.

There is a great deal of common ground

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between Civics and Political Science. Both are concerned with the organised society, social relationship, system of rights and duties, social good and the realisation of that good. The subject-matter of both is the same, but the difference lies in accent and emphasis. Civics deals with the individual in society. Political Science is mainly concerned with the State. But as the individual is a member of some State, Civics is, therefore, connected with the State. An important element of the State is its population or a number of individuals, Political Science is, consequently, concerned with the individual as well. One particularly treats of the national and international affairs, but the other specially treats of the local affairs. Political Science traces the origin and growth of political institutions, and Civics takes them for granted.

The aim of Civics is to produce a better type of citizen. This is possible when the political well-being of the individual is secured. Civics, therefore, considers the ways and means by which individuals may best serve the political institutions. Civics provides the right type of citizens to compose the body-politic, and Political Science discusses how that body



should carry on the administration of the country. Civics is the forerunner of Political Science. Civics is an elementary politics, but it is partially true, for Civics is not only concerned with the political life of the individual. But so far as political life is concerned, Civics is definitely a part of Political Science.

### **Civics and History.**

History is a faithful record of past events and movements, their causes and inter-relations. It includes a survey of economic, religious, intellectual, social and political developments of the human race. In other words, History represents the life and activities of various peoples in the past. Civics is concerned with the general well-being of the individual, and for that purpose has to study the citizen in relation to his past, present and future. In order to improve the lot of the individual, one has to study his past and draw conclusions for the future. History provides a record of the past and Civics takes into account the past achievements of men. Therefore, much of the ground which is covered by History forms part of Civics.

Prof. Seeley while establishing a relation between History and Political Science, said in that classic couplet:—

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History without Political Science has no fruit,

Political Science without History has no root. As indicated above, Civics is a part of Political Science only in so far as it is concerned with the political life of the individual. And Political Science is the "fruit" of History. So Civics is a further division of History. But all Civics is not a part of History; it is a part to the extent to which Civics considers the past of man for his guidance in future.

### **Civics and Geography.**

Geography is the science of physical phenomena or a description of the soil, climate and other natural environments of a country. The physical environment of a locality has a direct bearing on the moulding of one's character, conduct, behaviour and general physique. According to Buckle, it is not the free will of men but rather the influence of physical environment which determines the actions of individuals and societies. Civics is concerned, as a part of its scheme, with the physical well-being of the individual, and tries to use the theoretical knowledge of Geography to do service to man.

### **Civics and Economics.**

Economics is the science of wealth. It deals with the production, distribution, consumption and exchange of material wealth. Economics is thus, concerned with those activities and institutions which are requisite to the satisfaction of material needs. Civic life is vitally affected by the economic environment. No individual, no government and no State can prosper without sufficient economic resources. Happiness of society also depends to a large extent on the acquirement of wealth. The individual in order to be contented requires the economic minimum, without which he is bound to degenerate. Civics, therefore, tries to secure the material well-being of the individual, which is possible by a proper adjustment of production and distribution. Civics borrows a substantial portion of Economics to solve the economic problem of the individual. The two sciences are, therefore, inter-related.

### **Civics and Ethics.**

Ethics is the science of morality. It deals with the rightness or wrongness of a man's conduct in relation to a moral standard. It is concerned with the inner self of man and establishes a relation between the Creator, and the

created. Civics, on the other hand, deals with the external actions of men in society. But external actions are determined by the inner motives. Thus, no individual and no society can become happy without some moral standard to guide its destiny. What Civics aims at is not only to secure material well-being, but also the moral well-being of the individual. Ethical principles are necessary to guide our Civic life. The aim or object of good life is the concern of Ethics, and how to achieve that end is the subject-matter of Civics. Ethics is concerned with the end, Civics with the means.

### **Civics and Psychology.**

Psychology is the science of the mind and treats of the mental phenomena in relation to human activities. It seeks to explain the working of the human mind or the various impulses such as emotions, thought, will and imagination. Human conduct is, to a great extent, determined by his mental attitude and habits. Modern writers are trying to explain social and political phenomena by applying the laws of psychology. The adoption of a particular form of government and various political changes and movements can be explained through race psychology. The study of individual's

social behaviour forms the subject-matter of social psychology. Civics aims at the general well-being of the individual, and is, as a part of its function, concerned with his mental well-being. It is the right conduct which may enable the individual and the group to achieve the social good. Civics in so far as it is concerned with the problem of human conduct is indebted to social psychology.

### **Civics and Jurisprudence.**

Jurisprudence is the science of law, and is concerned with the legal organization of society. Social organization depends on the establishment of authority and order. Order is maintained through the laws promulgated by the political authority. Laws are the rules of human conduct which determine the relation of one individual towards another and towards the State. Without law there is no order and without order the well-being of the individual is not possible. Thus, law guarantees to the individual the enjoyment of his rights and compels him to fulfil his duties. Civics, therefore, recognises law for the regulation of Civic life.

### **The Scope of Civics.**

Civics is the youngest and latest branch of

human knowledge, but its scope is all embracing. It covers all the phases of a man's life in society. It is a study of the individual's life, his environments and activities. It is, therefore, very wide in its scope. The life of the individual consists of a discussion as to what was the position of the individual in the past, what it is today and what it ought to be. Man is a product of his environment. In the first place, the geographical environment vitally affects the life and character of the individual. The social environment or his membership of groups and associations represents the cultural aspect of a man's life. Man's social relations are the basis of his political life or environment. The citizen in his economic environment seeks the fulfilment of his material needs. The religious environment moulds his life immensely, and has a direct bearing on his character, conduct and behaviour. His multifarious activities – social, political, economic and religious – are directed towards the realisation of a nobler and happier life. A happier life is possible only when the general well-being of the individual is secured.

According to Dr. Beni Prasad, the scope of Civics may be defined as the analysis and im-

provement of social life with special reference to the neighbourhood and duties of man. Social life is the life of the individual in society. In order to improve the social life, a careful study of the social order is essential. It is not the entire social life with which Civics is concerned but with particular reference to the locality in which the individual lives and acts. A citizen is regarded, in the first place, a member of some smaller "political community", of a town or village, and indirectly of the State.

Since Civics aims at the general well-being of the individual and the betterment of his social life, it calls upon the citizen to perform a number of duties in that direction. But State-citizenship is of utmost importance to day, and involves a system of rights and duties, which are so essential to the general well-being of the individual. However, the ideal of a World-State is not realised so far, and Goldsmith's "citizen of the world" is nowhere to be found.

### **The Method of Civics.**

Civics is such an important and useful social science that it requires a methodical and systematic study. It has as its ideal a happy and noble life for the individual. Consequently, it

collects facts of social life, analyses, synthesises and coordinates them for scientific generalisation and conclusions. Thus, it is based on observation.

In order to grasp the full meaning of social life and to make a proper study of Civics, a careful collection of social facts is essential. To understand social institutions properly a study of their origin, growth and development, their purposes and their ideal is necessary. It is only through looking into the past and observing the present that we can build up the future. Social affairs require independent thinking. The student should be free from bias and prejudice; he should not readily accept the opinions of others but must judge for himself.

Sympathy with our fellow-men is a moral quality. It is imaginative sympathy which enables one to share in the joys and sorrows of others, however separated they may feel by religion, caste or profession. This will help us to form a constructive imagination, which may help us to understand the view-point of others. Side by side with this intelligent thinking, what is required is a practical turn of mind.



Since the ideal of Civics is to turn out useful citizens, it must follow a definite method. The practical device is social service, which alone can develop the truly civic qualities of man.

It is difficult to know oneself, much less others. In the words of Carlyle, 'No body has known himself,' the motto should be 'know thy work and do it.' Disinterested work is the best service. The highest good is the moral good. The best service, therefore, is one which is directed towards the realisation of social good. The Civic end is the general well-being of the individual. It is, thus, the Philosophic-historical method, which is the best plan for a scientific study of Civics.

#### Utility of Civics.

Civics is a systematic study of Civic life and its aim is to secure the general well-being of the individual. For this purpose, it coordinates all the important features of social sciences as they affect the Civic life of the individual and evolves a practical method which enables the individual to achieve the Civic end—his general well-being. Civic life has many environments—social, political, economic, cultural, geographical, moral and religious.

The individual is the pivot round which

revolve all institutions and associations. Civics aims at the welfare of the individual, so the study of Civics is of paramount importance. It is the only social science which is concerned with the betterment of the individual in all its aspects.

The social aspect of the individual's Civic life consists in his membership of several associations. Civics teaches the individual how to behave towards the many groups and associations of which he is a member. If he does not know how to behave in society, he is neither benefited himself nor can he succeed in helping others to become useful members of society. Social progress, therefore, depends on the nature of interest taken by an ordinary individual in the affairs of society.

Politically, the individual is a member of the State. The State exists for the individual and Civics is concerned with the needs and responsibilities of the citizen. The child of today is the citizen of tomorrow. Problems of citizenship are becoming more complicated and the State-organization is to be utilized to secure the political well-being of the individual. The individual as a citizen enjoys a number of rights and is also required to perform his duties. Civics

makes the individual conscious of his rights and obligations, creates in him a Civic sense and enables him to become a better citizen. It is wrong to think that the government has been and is the concern of a few. The excellence of government depends on the political consciousness of the common people—the individuals.

Economically, the individual should be self-sufficient. Happiness of man depends partially if not wholly on his economic welfare. Civics teaches the individual the rudiments of economics to enable him to secure his economic well-being. No body should remain idle, he must lead some profession to earn his livelihood. He must enjoy economic minimum, so that he may keep his body and soul together.

Culturally, the individual should be a decent and fine fellow. He must acquire good manners and must be a man of fine tastes. Culture is the result of social contact and social relationship. Civics teaches the individual how best social contact be utilised to make the individual culturally advanced—in manners, customs, special traits of character, dress and the like.

Physical well-being is an essential characteristic of the Civic life of the individual. Accord-

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ding to a proverb, there is a healthy mind in a healthy body. What the individual requires is a healthy body. It has been stated before that the geographical environment plays an important part in the formation of individual's physical being. Civics teaches the individual how to be benefited by the gifts of nature, and to make the best use of the geographical environment for the betterment of his general physique.

Even if the individual is socially, politically, economically, culturally and physically advanced, he is not a man unless he secures his moral well-being. Ethical principles are essential to guide Civic life. All progress is meaningless unless it conforms to some moral standard. Social good consists in moral good. The individual as a moral being has a moral obligation – that of social service with a view to the realisation of a happy and noble life.

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## **CHAPTER II.**

### **THE INDIVIDUAL AND SOCIETY.**

#### **Meaning of Society and the Individual.**

Civics deals with individuals living in society and not with isolated human beings. The word Society, in its broadest sense, denotes the society of mankind and includes a multitude of groups and associations. In a narrow sense, society means an association. Each association, consists of a number of individuals united together for some common purpose. Just as it is not possible to form a society without individuals, similarly we cannot conceive of any individual cut off from Society.

#### **Man as a Social Animal.**

More than twenty two centuries passed when Aristotle, the Greek Philosopher, said "man is a social animal." It means that man cannot live all alone but must seek the society of his fellow-men. Nature has endowed him with a capacity of sociality, and he cannot help associating with other men. If we look at the life of the individual from the cradle to the grave, we find him connected with society.

Man is by nature social. It is the human

instinct that impels man to move in society. It is necessity that compels him to remain in society. Man is born in society. The child is born as a helpless babe and depends on society for its nourishment and nurturing. It is the society of his parents and relations and their affectionate care that enables him to survive.

The child is endowed with many latent potentialities and requires for their development a social environment so that he may grow to the stature of man. Each man has some inborn faculties, such as the faculty of speech. These faculties will remain undeveloped unless they find an expression. The development of man's capacities depends on the social stimulus. It is first in the society of his parents and relations, then of his friends and associates that the child grows to manhood. Man is, thus, a social product and represents a social growth.

The child's nature is plastic and educable. The human mind is susceptible to outside influences, and the child imbibes the surrounding atmosphere by adopting the manners, habits and mode of living. It receives impressions from society and develops them. It tries to imitate and follow others in every respect, and the im-

pressions that are created on his mind remain lasting. Man is a product of his social environment.

After the child is being nurtured, there arises the immediate necessity of educating him. The child goes to the *Maktab*, the *Madrasah*, the school and the College. These cultural associations are parts of human society and afford an opportunity for the individual to develop the cultural aspect of his life.

Society enables the individual to get a start in life. He adopts some profession and enters life. He marries, begets children and tries to fulfil his economic needs. He takes care of his dependents and secures their well-being. If he is a man of extra-ordinary intelligence and intellect, he rises high.

The individual finds society within him and around him. He feels within himself a member of society and externally he behaves like a member of society. He is always conscious of the fact that he lives, moves and acts in society.

By nature the individual is a lover of society. He is fond of company, and cannot do without associates. He further stands in

need of mutual help and cooperation. Thus, he craves for society so that his needs be fulfilled.

Self-development and self-realisation are only possible in society. The individual can develop his personality, his mind and body in society. Out side society there is no scope for his self-development. Self-realisation is a more difficult task. To be what you are to be or to become what you are meant to become is self-realisation. It is not easy to know what one is specially created for, and to achieve what he is destined to achieve involves further difficulties. But it is the duty of every person to rise to the occasion and become what nature has meant him to become.

It is, thus, in society that the individual gets opportunities of all sorts and develops his faculties of body and mind. He acquires special traits of character and has a cultural background. He becomes a decent, loving and amiable fellow and rises from the position of an animal to man. Man can become man only in society.

### **No Antithesis between Society and Individual.**

It is clear from the above that the individual and society are not contradictory in terms.



The individual is not opposed to society and society does not go against the individual. There is no such thing as society versus the individual. As a matter of fact, the two are so closely related that one cannot be considered without reference to the other. Society consists only of individuals and every individual is essentially a social individual. Society is not a super organism and has no super-mind. It lives in the minds of its members. Every individual lives, moves and acts as a member of society. Sociality and individuality go together: sociality can only exist in individuals and individuals can only live in society.

Society and the individual progress and develop together. The progress of society depends on the progress of individuals composing it. The individual by developing his self indirectly contributes to the collective development. If the society is good, most of its individuals are good and if the society is bad, most of its members are bad. But no society is wholly good or bad. In a good society there are more opportunities for the individual to improve his lot. In a bad society there is an element of progressive individuals, who always help in promoting the condition of society.

Thus, the individual develops in accordance with the opportunities as are presented by society. These opportunities are, however, restricted on account of a number of factors. Mankind is divided into races and nations, free and enslaved people. Nations are further torn among themselves by considerations of birth, wealth and calling. These artificial distinctions hinder the opportunities, and the free-growth of the individual is marred.

The object of a man's life from the ethical point of view may be defined as self-realisation. Self-realisation is possible only in the society of men and will, to an extent, depend upon the character of that society. Man as a moral being has a moral end, that of self-realisation. Man lives in society to develop all that is best in him. Man's development, material or spiritual is conditioned by the nature of society of which he is a member. It depends substantially upon the type and condition of society that the individual may manifest his hidden qualities and rise to the full stature of his being. A crude society, however, cannot guarantee this result.

### **The Social life.**

The aim of society is to confer happiness on

individuals. Social life expresses itself through a number of institutions. An institution is a recognised usage or practice. Many of the institutions manifest them through associations. Association may be defined as a group of persons, small or big, having the same object or objects in view. A rich and more varied social life is marked by the presence of a larger number of associations. The function of each association is to develop some aspect of one's personality. Self-development is such a complex phenomenon, that no single association can undertake its fulfilment. Hence, there is a multiplicity and variety of associations.

The sociality of man and his manifold needs compel him to form and move in associations. Associations differ in their status and jurisdiction; some are local, others are national and international. In point of organization they also differ; some are rigidly organised, but others are loosely connected, and in between the two extremes there is a variety of minor associations. Their duration of life also varies; some are fairly durable others exist only for some time.

### **Forms of Associations - Natural and Artificial.**

From his birth till his death the individual

is connected with a number of associations. Each association has a definite purpose to fulfil and contributes to the happiness of man in some form or other. Roughly speaking, there are two main types of associations—Natural or Compulsory and Artificial or Optional. Natural associations are those which existed long before the child is born, and of which the individual automatically becomes a member. The moment a child is born, he finds himself a member of the family, the clan and the state. Thus, they are compulsory in membership and the individual has no say in the matter, whether he would remain a member or not. Natural associations are not the result of a conscious process; they are not created by men, but are said to have been designed by nature.

On the other hand, there are artificial or man-made associations. They are such as are formed by the conscious effort of man. As the child grows in age, he finds it to his advantage either to join the existing associations or to form new ones to meet his requirements. Membership of such associations is optional or voluntary, and the individual may or may not join them or resign his membership as may suit his convenience. The importance of these

associations does not decrease on account of the fact that they are voluntary. In fact, some of them are as useful as the natural associations themselves.

### Similarities and Dissimilarities.

Both the types of associations – Natural and Artificial – have some common and uncommon features. Both presuppose the social nature of man. It is presumed that man is a social animal and can only live in association with his fellow-men. In order to satisfy his innate desire for companionship as well as to fulfil his manifold needs, the individual requires social associations. All associations are based on the fundamental unity of human nature. Cooperation and sympathy are their key-note: without cooperation there is no continuance of a smooth life and without sympathy there is no comfort and ease. Every association secures a number of rights for its members and requires them to perform duties in return.

There are, however, many dissimilarities between the Natural and Artificial associations. Natural associations are absolutely essential to the very existence of men; but for them life would not be possible. Artificial associations

are created for the sake of ease, comfort and convenience, and life is possible without them. The former have been existing since the advent of human race and are as old as mankind itself. The latter are only created from time to time. Natural associations have definite and limited functions to perform, but the Artificial associations have varied aims and objects and exist so long as they are found necessary.

### **Types of Associations.**

It is difficult to classify the various associations in an exhaustive manner. They may, however, be grouped according to the nature of functions they perform. The various types of associations are based on various considerations. There are many associations, which are based on kinship or blood-relationship as for example, the family, clan and tribe. There is a political organization called the State. All these are Natural associations. The remaining are Artificial associations—religious, vocational, cultural, recreational, philanthropic and political.

### **The Family.**

Among the Natural associations, the family is the most important. It is the first and most essential unit of human society. It is the oldest

form of human association. It is for the first time that the child comes in contact with the family and no other association whether natural or artificial. It is most essential in the sense that life is not possible without the family: the child would not become man except in the family. A child owes its birth to a mother and a father, and these three at least form a family. It is natural love that keeps the parents and children together. The child is nurtured in the family and is provided with every comfort or convenience as is possible according to the means of the house. The parents are anxious about the welfare of the child and are prepared to make any sacrifice. When the child grows up, he is given education. By slow stages the child becomes a young man. The child in his turn reciprocates the feelings and love of his parents and is the hope of their old age. Sympathies and affections are cultivated in the family and love between the members of the house is the general tendency of family life. The family is, thus, a school of affections. The family represents a stronger feeling of unity than any other association.

The family, it is said, is the basic unit of human society. If society is the structure, the

family is its foundation. During the first three years the child learns most. It is in the family that the child learns the rudiments of social life. He knows how to eat, walk, talk, dress and live. He further adopts the habits and manners and acquires many good qualities of selflessness, devotion and sacrifice. The cultural aspect of a man's life is first developed in the family. A corporate life for its existence depends on mutual adjustments, and the habit of adjustment is first acquired in the family. The child is taught how to adjust his temperament, how to adapt himself to circumstances and how to create mutual harmony and good will with a view to the realisation of the common good. It is a spirit of toleration and compromise and above all family loyalty that keeps all the members united. Thus, the family is a great school of education.

The family is also an economic unit of human society. The family must be economically independent. It should, in other words, be self-sufficient; its resources should be sufficient to meet its economic needs. With the self-sufficiency of the family is linked the economic welfare of the individual member. Every individual requires the economic minimum,



just as much money as may enable him to meet his bare necessary of life. In order that the family may be self-sufficient and the individual may have his economic minimum, all the members of the family, as far as possible, be earning members. There still remain some who are dependents, and thus by supporting one another in times of needs, members learn the first lessons in charity and mutual assistance.

The family is further an administrative unit of human organization. The child learns the first lessons in citizenship. The eldest male member is generally the leader and guide, and all members submit to his will. They also obey the unwritten rules of conduct and keep up the traditions, customs and usages of the house. The family is, therefore, called the cradle of Civic virtues. Respect for authority and submission to its orders are the first lessons taught to children and as the tendency develops, they become better citizens in life. The parents practice the virtues of abstinence and selflessness and children also develop their sense of discipline and self-restraint. Thus, family is a State in miniature. It is a school of discipline.

The development of Civic virtues depends on the healthy conditions of the family.

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What is required is a happy family, for the attainment of which many favourable conditions are necessary. The first factor is education; an educated household is the basis of a right kind of social life. Where the parents are educated, their children enjoy greater facilities of instruction; when they are illiterate, their children are handicapped. Education changes the outlook on life and creates those finer feelings, which are so essential to the making of a good family. It dispels ignorance, and contributes immensely towards the cultural well-being of the individual. The family in order to be happy must have enough material wealth. The family and private property go together. If there is no family, private property is not necessary; if there is no private property, continuation of the family is not possible. Poverty breeds its own evils, it degenerates man. Economic well-being is the means of a decent living - a sanitary house to live in, neat clothes to put on, wholesome food to eat, sufficient money to spend on proper education and other uplift work and to save something for future. This will not be possible unless there is an 'urge to work.' No man should remain a parasite, he should prefer work

to idleness. The greater the number of working members, the better the condition of the family. Another characteristic of a family is its harmonious life. When individuals adjust their temperaments and acquire the habit of accommodating themselves with one another, there is harmony and good-will among the members of the family.

The progress of society manifests a higher standard of family life. It is society which offers opportunities for its members for their self-development. As every individual is a member of some family, there is no such thing as an independent family; it is a part of human society. The aim of human society is to secure the social good, the attitude of every family should, therefore, be to contribute towards that social good. The organisation of the family has always raised problems of the greatest magnitude, and modern economic changes have brought them into greater prominence. Such problems are marriage, divorce, the mutual rights of husband and wife, rights of the children against parents and guardians, the laws of inheritance and the feelings and sentiments that lie at the basis of the family. The mutual adjustment of the temper and habits of husband

and wife is one of the most difficult problems of life. Since many marriages are failures so far as the higher ideals of life are concerned, divorce should, therefore, be permitted by law. The rights of the children against their parents is a primary concern of the State. Educated and well-disciplined children are better citizens of a State. The laws of property and inheritance, however, differ from country to country and community to community.

### The Clan and Tribe

Man is a community-building animal, and from the beginning has shown a strong inclination to live in communities. Family, as related before, was the first organised form of social life. With the expansion and continuation of families developed 'gens' or Houses. These houses formed the clan, which was ruled by the chief or the eldest kinsman. A combination of clans formed a tribe, which was ruled by the Patriarch. Under the Patriarch were the chiefs of the clans, and under the chiefs were the heads of the families. Clans and tribes often had their own governing councils and assemblies. The chiefs of the clans were the elders of the tribe and helped the Patriarch with their counsel. They also decided disputes

according to the established customs of the clan.

As the proverb goes "blood is thicker than water", the bond of union among the members of the families, clans and tribes was kinship or blood-relationship. All members traced their descent from a common ancestor and considered themselves as a unit of society, which was marked by oneness of purpose. Similar customs, similar forms of worship, similar features, similar dress and similar organization were the outward symbols of tribal unity. Common outlook on life, common economic needs and common methods of their fulfilment created a solidarity, which was essential to a political life.

### **The Village and Town.**

As families multiply and form a clan, they prefer occupying a definite tract of land and establish a village of their own. Further expansions result in the formation of many villages or town. The villages are united together by bonds of common loyalty to the locality. Common economic and cultural interests create a fellow feeling among them. Economically, the village is a self-sufficient unit; its own resources are enough to meet its requirements. All important professions flourish in the village, and all needs are fulfilled on the spot.

The villages develop into towns, towns into cities and cities into nations or States. Thus, the village is the smallest administrative unit of the biggest and supreme natural association, the State; an exhaustive study of which requires a separate treatment.

### **Artificial Associations.**

Apart from the Natural associations, there are Artificial or man-made associations, which are established from time to time to serve some particular ends. They differ in their nature and functions but their membership is optional.

### **Religious Associations.**

Some associations are religious : an organised religious association is called the Church. Religion is a natural institution. From times immemorial people have been religious-minded. In ancient times, kinship and religion went hand in hand. The tribe and the clan claimed their descent from a god. In primitive society, religion exercised great influence and secular authority owed its origin to religious sanction, without which no person could hold any power. The Church in medieval times continued wielding tremendous power. Conflicts between the State and the Church, the former

representing the secular and the latter representing the religious aspirations of men, constitute one of the most thorny problems of politics. With the growth of the ideas of secular authority and toleration things have changed. In Europe, since the 16th century, the State has proved itself more powerful than the Church. Religious associations, however, remain by their nature international; they appeal to humanity as a whole and refuse to recognise state-boundaries.

Since the beginning of human race, religion has influenced and guided the working of human mind and conduct. Mankind has believed in some thing or other, either in certain superstitions, deity or deities, which formed their article of faith. Religion establishes a relation between the Creator and the created or the inner self of man and the Lord of the universe or simply between Soul and God. Members belonging to the same religion are united together by sentiments of common religious beliefs, and common religious loyalty ignores considerations based on birth or colour. Many religions treat their followers as members of a common brotherhood and do not make any distinction between man and man. Reli-

gion is still a great unifying factor.

### **Vocational Associations.**

An essential feature of an organised social life is its economic factor. Good life is not possible without the material well-being of the community, which is based on a good system of production and distribution of wealth. Thus, trade, commerce and industry are the various aspects of man's economic activity. Mankind has never been free from economic pursuit, and many vocational associations have appeared and disappeared beginning from the village *panchayat* in India to the guilds of European cities. The Industrial Revolution changed the economic face of the world, and ever since problems of production, distribution and exchange are growing exceedingly complex. There is a tendency to develop vocational organizations, and at present almost all persons pursuing a definite trade, profession or calling are forming associations of their own, such as Medical Councils, Bar Associations, Teachers' Associations, Postal Employees' Associations, Labourers' Unions, Railway-men's Associations, Landlords' Association, Factory Workers' Union, Tradesmen's Union and a large number of other associations.



These associations are meant to serve the economic needs of the community, to provide expert professional knowledge and to safeguard the professional interests of the members. Some associations are local, others regional, national or international such as Trade Union, Chamber of Commerce, Labour Federation and the International Labour Office. In such associations, considerations of religion, caste, or creed do not arise, and every individual leading the same profession or calling can become a member of the Association. They also secure some other useful purposes; there is a brotherly affection and cooperation among the members and a standard of professional integrity and common rules of behaviour are found. But the moment these associations seek to advance their own selfish interests in preference to the general interests of social welfare, they become dangerous to peaceful life; and professional clashes occur.

### **Cultural Associations.**

There are a number of associations, which are based on cultural grounds. Schools, colleges, universities, learned societies, academies, libraries and museums are some of the cultural associations. Some are small, others large; some

are local, others are international. Their attempt is to maintain and extend particular cultural tendencies and traditions of their members. Their main object is to advance knowledge, to impart education and to raise the general cultural tone of the community. Education is the very breath of society, and educational institutions fulfil an urgent human need – the disinterested pursuit of knowledge. Institutions develop healthy traditions of their own and provide a liberal and practical education to its members. Students imbibe the cultural atmosphere of the place, and carry with them the stamp of the institution. Next to the family, the educational institutions play an important part in the formation of a society of cultured and decent people. Some institutions exist for the cultural advancement of a certain community, but their doors should as a rule be open to members of all communities, so long as they abide by the prescribed rules of the institution.

### **Recreational Associations.**

Associations are also established for the sake of enjoyment and recreation. Just to refresh one's body and mind, the individual requires sports, clubs and entertainment societies. Such associations develop social life and provide

amusement to their members to pass their leisure-hours in the company of their friends. Every individual has his own tastes, and he may accordingly join a particular club or society. There is something like a personal life of the individual, and life would become miserable if it is always serious. Change is the spice of life. To soften the seriousness of life and to forget its sorrows, the individual requires some recreation. A moment's happiness may constitute real life. From the stand-point of Civic welfare, the entertainment that is provided in clubs and societies should be wholesome, both physically and morally.

#### **Philanthropic Associations.**

Associations are also formed for philanthropic and charitable purposes. They express on the part of their founders the noble urge to social service. One of the noblest virtues of men is philanthropy, which is certainly an activity of self-negation. The individual does not care for his personal gain, but of the gain of others. Life is imperfect if it is solely lived for one's own comfort and enjoyment and is not prompted by consideration of the popular good. No person is wholly selfish or selfless, but differs in different virtues in varying degrees. To

some, the highest ideal of life is to help the poor, needy, disabled and sick. Individual relief does good to some, but organized relief does a lot for many. Such organised institutions are hospitals, orphanages, asylums, *Dhram-salas*, *Musafir-khanas*, endowments, libraries, schools and Red Cross Societies. Some of them are sectarian and local, others are cosmopolitan and international in their character.

Purposeless charity spoils man, and deprives him of the spirit of self-help. One who is merely helped becomes indolent and does not stand on his own legs. Thus, charity has its own abuses. Prevention is better than cure, and a charity, which tries to remove social ills is the best charity. For instance, it is much better to promote a healthy atmosphere and sanitary ways of living than to found hospitals for treatment. The poor, instead of being supported by charity, should be admitted to work-houses.

### Political Associations.

There are a number of Associations based on political considerations. The most important is the State itself, but sometimes within one State, there are many political organiza-

tions. Politics means the views, policy and activity of a number of individuals in their relation to the State. People having an identity of political views and advocating the same policy generally organise themselves into separate associations. An individual joins a political organization to secure his political well-being.

In India, there are many political organizations such as the Congress and the Muslim League. The Congress, it is professed stands for the whole of India, the Muslim League is the representative body of the Muslim nation in India; the political ideal of one is a united free India, the other aims at the establishment of free Muslim States in a free India.

### **Proper Ordering of Loyalties.**

Society, as we find it today is not a homogeneous group, consisting of persons equal in capacity and circumstances. Nature has not been favourable to all in the award of its gifts; what is worse is the fact that individuals are not treated on an equal footing on account of the corrupt condition of society. Human society, on the other hand, is broken up into a number of conflicting units. The component

parts of human society are the various states, nations, communities and groups or associations. If society were perfect, all its units would work in harmony. But since society is nowhere perfect, its units struggle with one another for supremacy. One state is at war with another state, one nation with another nation, one community with another community, one group with another group and one individual with another individual.

The individual is not only a member of society, but is a member of several associations, of which society is composed. As a member of human organization, the individual is attached to many associations, local, national and international. For each of these associations, he always has some love or devotion, which is technically called loyalty. A man may be a humanitarian, and may have loyalty for the whole human race. Another person may be a nationalist, and the interest of his nation or country may be nearest to his heart. Others may have loyalty to their class, caste or profession or to their family. Thus, when the individual thinks exclusively of the interests of his family or one group to the exclusion of other groups, or keeps in view the welfare of his own state at the

expense of other states or humanity, there is a struggle between his loyalties. Supposing, an individual is a member of two associations, one association demands a course of action, which may go against the interest of other association, then the individual's loyalties to the two associations come in conflict.

Now the problem is how to bring about a harmony or secure a proper ordering of loyalties between groups, communities and nations so that the interest of the individual be secured. The main interest of the individual is his general well-being. His social well-being is only a part of his general well-being. The social well-being constitutes a harmonious social life, which in its turn depends on harmonious social relations. Harmonious social relations rest on the proper adjustment of loyalties or the right ordering of loyalties. Civics is mainly concerned with this problem. The solution seems rather difficult.

It is said that the individual's social life as a whole manifests an adjustment of his loyalties to the various associations, of which he is a member, and through which he makes his contribution to human good. This statement

requires an explanation. The individual's social life is lived in society or a number of associations. The fact that the individual is one; his social life is also one; he is simultaneously a member of several associations; he is pulling on well in life, there being no conflict between his memberships of several associations; signifies that the individual had a capacity of adjusting his loyalties.\* Had there been no capacity of adjustment on the part of the individual, life as a harmonious whole would not have been possible. As a matter of fact; life is a process of adjustments. A harmonious life is necessary for self-development, which is a complex phenomenon. It is only through associations that the individual gets an opportunity to develop his self and to realise the aims of his life. Each association serves some particular object, and the individual joins that association to develop some particular aspect of his personality. In return the individual owes loyalty to that association. To all such associations the individual offers separate loyalties and enjoys privileges, which they guarantee. Since these loyalties are separate and distinct from the point of view of each association, they do not conflict but adjust themselves within the frame-work of human society:



The individual is not only benefited himself, but benefits the association by becoming its member. As a member he makes some contribution to the good of that association. Since that association is a unit of the State, the individual is indirectly helping the cause of the State. As that State is a part of the world-organization, the individual is imperceptibly or subconsciously contributing his share to the realisation of human good. Thus, the individual expresses his contribution to human society, through groups and associations.

The success of these associations depends on the individual's will to cooperate. The feeling of harmony is not foreign to human heart. In spite of the records of wars, conquests and murders, man has no innate desire to injure his fellow-men. Human beings are not wholly selfish or self-less. Human nature being the same everywhere, individuals have their own peculiarities, prejudices, selfish interests and likes and dislikes, but in their heart of hearts there is always a feeling of sympathy and good will. The main object of Civics is to teach people to remove prejudices, minimise selfishness, avoid conflict and broaden sympathies. A true citizen would try to contribute to the

greatest extent to the good of society. A guiding principle of Civic life should be 'my family before myself, my community before my family, my nation before my community, and humanity before my nation.'

Human associations with their different organizations and varying objects represent a basic unity of human society. All individuals are members of human society. The world society has come closer on account of advancement of culture, easy means of communication and scientific inventions. No individual, no group and no State can remain isolated or out off. Just as it is the claim of humanity to appreciate man as man, similarly there should be harmony between State and State. National patriotism is a noble sentiment but no people should follow a policy which may conflict with the larger interests of humanity or injure the legitimate interests of other States. Selfish patriotism should, therefore, be subordinated to a wise humanitarian policy.

Within the jurisdiction of the State itself, there should be no group hostility. The selfish interests of groups should be subordinated to the larger interests of the State. Nor should

there be any distinction among families or members of a family. One is more loyal to one's family, but, this love should not be blind to the general interests of other groups and the nation.

When harmony is possible between nations, groups and individuals, then the individual will have a harmonious social life. The goal of social progress, therefore, is the perfect individual in the perfect society. It is the duty of the individual to work for this end.

## **CHAPTER III.**

### **THE INDIVIDUAL AND THE STATE.**

#### **Introductory.**

The State is a politically organised society of individuals. When a number of individuals occupy a certain tract of land, and establish a government of their own, they are said to have formed a State. The State implies an idea of a supreme authority and submission to that authority on the part of the inhabitants. An organization or government presupposes the need of peace and order, which can only be secured through law. Government, thus, prescribes certain rules of human conduct, which may determine the relation of one individual with another and of one individual or individuals with the State. This is the political aspect of the individual's Civic life.

#### **State-Defined.**

A State may be defined as a political society of individuals, occupying a definite territory and having an independent government of their own. The term 'State' has been defined in various ways by different political philosophers. Aristotle defined State as "a union of families

and villages having for its end a perfect and self-sufficing life" Both Bluntschli and Burgess thought of the State as the politically organized people of a definite territory. According to Woodrow Wilson, a State is a people organized for law within a definite territory. Garner has improved upon these definitions by saying that the State "is a political community of persons more or less numerous, permanently occupying a definite portion of territory, independent of external control and possessing an organised government to which the great body of inhabitants render habitual obedience."

### **Elements of the State.**

The above definitions clearly bring out the component parts of the State: they may be classified as population, territory, organization and unity.

### **Population.**

Population is the first essential of the State. There can be no society without human beings. A number of individuals living together forms a population. The political society or State cannot, therefore, exist without population. No definite number of population can be fixed: but the number should be such as may conveniently

be divided into the governing body and the governed. If the number is not sufficient to support a State-organization, it cannot naturally form a State. The population of a State is always composed of citizens, aliens and subjects. Citizens are those subjects, who enjoy rights both civil and political: aliens are foreigners and owe their allegiance to a foreign State.

### **Territory.**

The second essential element of the State is its territory. A population requires a tract of land for inhabitation, so that there may be a permanent relation between the dwellers and the soil. The sovereign authority in a State also refers to a definite territory and is exercised on a territorial basis. The area of a territory may be large or small. A large State may have a capacity for self-defence, special position in the international polity and convenience in its governmental functions, but it should not necessarily be a great power, as for example Russia against Great Britain and China against Japan. However, the modern tendency is in favour of bigger States, and smaller States are now federating to strengthen their position.

### **Organization.**

The third essential characteristic of the

State is its government. When a number of individuals occupy a definite territory, there arises the necessity of a political organization, which may regulate the conduct of the people in dealing with one another. Thus, a political machinery or government is set up to maintain law and order in the territory, to protect the interests of the people and to ward off foreign aggression. A government is the actual manifestation of a State.

### Unity.

The most important element of the State is its sovereignty. A people having a territory and organization of their own may not yet form a State until they possess unity or sovereignty. Sovereignty is the ultimate power within the State and is original, supreme and unlimited. Internally, the State has complete authority over all individuals and associations of individuals and externally it is independent of the control of other States.

Keeping in view the definition and elements of the State, England, Germany, Italy and U. S. A. are all States. But India is not a State: it has a population, a territory, a government but no sovereignty. The British Parlia-

ment remains a sovereign body for India. The Indian States are semi-sovereign bodies, for their external relations are controlled by the Crown. It is doubtful whether the self-governing dominions of Canada, Australia, Newzealand, South Africa and the Irish Free State are States in the strict sense of the term. The Dominions are the "autonomous communities within the British Empire equal in status, in no way subordinated one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of nations." Theoretically, the Dominions have a right to break away from the Commonwealth, and practically they enjoy the rights and status of statehood. Thus, they are States in effect, though not in law.

Some hold that the League of Nations is a 'super-State', other say it is not a State at all. Actually it is not a State; it has no territory of its own, no sovereign authority to enforce its commands and no subjects to obey. International law is, in fact, international morality, and the League can only exercise moral influences. The League repre-



sents a tendency towards the realisation of a common organization of humanity or the World-State.

### **State and Society.**

Society is much wider in scope than the State. Society deals with man without any reference to his physical environment. Human society is composed of all associations and individuals. The units of human society are the various states, nations, communities and groups. Society may, therefore, consist of all individuals belonging to one state or the other. The State is territorial in its basis and is concerned with a number of individuals living in a certain territory as an organized people. Society, on the other hand, refers to all human communities, whether organised or unorganised. State deals with the political relation of a definite people, but society is concerned with the whole range of human relations. The State is only a unit of human organization, and forms part of human society.

### **State and Human Associations.**

The State is a human association, but the most important of all associations. In each State, there are found a number of associations,

and as the State is supreme over all of them, it is said to be an association of associations. The State is essentially a natural association, but like other associations it has also an artificial aspect. All associations are based on the individual's social nature and spirit of cooperation, and as such they are natural. Capacities like sociality and cooperative endeavour are in-born with the individual; he cannot live without social relation, and cannot accomplish anything without the aid and cooperation of other individuals. The State is the result of the same tendency. As a matter of fact, State as a political society has always existed and is as old as mankind itself. Individuals and their institutions are the products of their environment. Individuals develop their capacities according to the environment in which they live. They make a conscious effort to evolve institutions and forms of government. Thus, the natural and artificial elements of the State blend themselves imperceptibly, and the distinction cannot be retained.

In spite of some striking similarities between the State and other human associations, there are, however, fundamental differences. The State is compulsory in its membership, and an

individual remains a member of some State throughout his life. Other associations are optional; the individual may or may not join them. State is territorial in its basis, and is confined to a particular territory; an association may extend to the whole inhabited world. An individual may become a member of several associations; but he cannot remain a member of more than one State. Associations are formed to further one or a few particular interests, but the State deals with many and ever-increasing objects. The State is a permanent institution, but associations are more or less temporary. The State exercises force on its members, but associations only employ persuasion. State does not require for its existence the consent of other associations, but no association can exist without the consent of the State.

### **State and Country.**

State signifies a particular territory. A country is merely a geographical expression, and may or may not enjoy a political unity. Geographical divisions have undoubtedly helped in the formation of States, but a country may have several States, and even one State may

extend to several countries. If one country has only one State, the two terms may be used synonymously.

### State and Nation.

State is to be distinguished from nation and nation from people. A people signifies a racial or ethnical concept and consists of a mass of individuals united together by a common civilisation without having an organised political life. A nation is a group of people or a society of all the members of a State united and organised as a political entity. It is the political consciousness or organization that lifts the nation above the people. There are many factors that produce a sentiment of nationality in a certain people; racial unity, the same territory, the same government, the same religion, common customs and habits, common language, common political and economic interests and so on.

State is a political idea while nation is a racial concept. State has a particular reference to a territory and government, but a nation is a people organised in a State. Mankind is divided into a number of peoples, when people organise themselves politically and form a government, they become a nation. Usually, a

State constitutes a nation, and the sentiment of nationality is the basis of every State. Sometimes, a single State may embrace within its limits several nations or nationalities, and is called a State of nationalities. The British Empire consists of a number of nationalities. On the other hand, a single nation like the Poles may be divided into a number of States. Thus, the theory of 'one nation, one State' falls to the ground. It is not necessary that every State may be a single nation or every nation may form a single State. The strength of a State, however, depends on its national homogeneity and a State comprising several institutions is based on compromises, checks and balances.

### **State and Government.**

State and government are sometimes incorrectly used in the same sense. They are distinct terms, yet closely related. The State is the whole, of which government is an essential part. In other words, State is an association, and government is its executive organ. Government is the organization or the machinery of the State. State is comprised of all the inhabitants of the territory, but only few members constitute the government. All the individuals

living in a certain territory are members of that State, but only those members who are entrusted with the charge of carrying on the administration form the government. The State is a permanent institution, but government is temporary and may be changed from time to time. The State is an abstract term, but government is concrete. No body can observe the State, but one may point out to individuals constituting the government. A State without government is meaningless; it will cease to function the moment its government is abolished. All states are similar in their nature, but governments have a variety of types. States differ not in their nature but in their forms of government. Government is the actual manifestation of the State. Hence, individuals can demand rights against the government, but not against the State.

### **The Origin of the State.**

Having defined the State and distinguished it from other human associations, naturally a question arises as to how the State came into existence. What is the origin of the State? The State is as old as mankind itself. Individuals have, at all stages of their civilization, organised themselves into societies. From

the earliest and most crude forms of human society evolved the latest and most perfect political institutions. There always existed differences in forms and functions of political societies due to varying conditions of human life, stages in civilisation and the general environment of people.

Before discussing the evolution and development of the State, it is worthwhile to state the various theories, which have been advanced from time to time by the political thinkers regarding the origin of the State. None of these theories is wholly true or false: all of them contain at least a partial truth.

### **The Divine Theory.**

The theory of the divine origin of State was widely accepted at the earliest stages of political life. In primitive time, religion and government were not separated. The Oriental Empires were marked by the same tendency, and it was believed that the king derived his powers from the gods. According to the Hebrew theocracy, God was not only the main source of authority, but He actually took part in the administration of the State. They were the Greeks and the Romans, who for the first

time declared that the State is a human association, but indirectly divine. It was not, however, till the Middle Ages when the conflict arose between the Pope and the Emperor that the theory was formulated. Towards the close of the Middle Ages, the theory was revived by advocating the doctrine of divine authority and thus supporting the royal power against the growing political consciousness of the people.

The theory attributes the origin of the State to the will of God. State is the handiwork of God. Political authority is derived from God alone. There is a "divinity that hedges a king". A king is appointed by God and is His Representative on earth. He is, therefore, responsible to God alone and not to his subjects. The king makes laws, enforces these laws and compels obedience from the people, but he himself is not bound by these laws. People must submit to the authority of the king considering it to be the will of God. People cannot rise against the king, for a rebellion against him is a rebellion against God. James I, the first Stuart king of England, thus, described this aspect of the theory, "As it is atheism and blasphemy to dispute what God



can do, so it is presumption and high contempt in a subject to dispute what a king can do or to say that a king cannot do this or that."

The theory helped the people to choose monarchy against anarchy, and thus established peace and order. It gave a divine character to the authority of the king, and people looked upon their king with reverence. It was most suited at a time when obedience and discipline were needed. It also emphasised the moral end of the State. In spite of its many merits, the theory involves a number of defects. It made the king's authority absolute. The king was made responsible to God and not to the people, and kingship become a permanent and hereditary institution. People had no rights against the king and no means to redress their wrongs. The truth is that the State and government are the results of a conscious effort on the part of the people pursuing a moral end.

### **The Force Theory.**

The theory states that the State is the outcome of force. It is the law of nature that the stronger subjugates the weaker. When a strong physical force comes in clash with a weaker physical force, the former triumphs.

Brutal force is the basis of political authority and those who triumph become rulers. It is might that gives right; those who master power acquire a right to rule. Thus, tribes develop into kingdoms and kingdoms into empires. 'War begot the king', force created the State and force maintained it. In short, throughout the development of the State, force has been a contributing factor. Hume, the chief exponent of the theory, says that when a tribal chieftain or leader came out victorious in war and peace was concluded, he maintained his control over the people first by persuasion and then by force and thus reduced them to subjection. The result was the establishment of the State. In the Middle Ages, the Church fathers and the theologians still more emphasised the evil nature of political power, and tried to substitute the might of the Church for the might of the State. The Individualistic school also based their theory on this fundamental issue and declared that the State is the off-spring of evil, and the individual should have the maximum liberty. The political theory of Socialism attributed the growth of the State to a process of aggressive exploitation by a small part of the community. Existing governments, the Socia-

list says, represents a coercive organization which holds the workers in bondage. Against the theory of popular sovereignty underlying the French Revolution, a modified view was put forward that obedience was the natural duty of the weak and benevolent authority and protection the rights of the strong.

The theory is criticised on the ground that it justifies the arbitrary authority of the strong over the weak. It is contrary to the ideas of personal liberty and law. There is no liberty for the individual under a despotic government, and law has no meaning when the word of the autocrat is law. Mere force cannot form the basis of the State; it is the right that gives might. The real force on which a government rests is the force of public opinion. Man is a moral being and his actions are guided by moral ends. State and government are to a great extent the results of human efforts pursuing a moral end. The truth of the theory lies in the fact that every government rests on a certain amount of force. Even in democratic governments it is the force of the majority to which the minority is obliged to submit.

#### **The Social Contract Theory.**

The Social Contract theory is the most im-

portant of all the theories regarding the origin and justification of the State and in its influence on modern political thought. The theory holds in brief that there was a State of Nature, when there was no political form of society. To avoid this state of affairs, people made a compact among themselves to establish a civil society and finally contracted themselves into an organized political society. The idea that the authority of the ruler rests on the consent or will of the people is an old one. It is found among the Sophists of Greece and the writings of Epicurus. Plato and Aristotle were, however, opposed to this idea. The old Testament provides historical examples of the theory and the Roman law of contract also considered the relation between the Emperor and his subjects. Throughout the Middle Ages and the early modern period, contract was regarded the basis of political authority. The logical development of the theory was, however, carried out by Hobbes and Locke in England and by Rousseau in France.

The theory is divided into three parts - the State of Nature, the Social Compact and the Political Compact.

Before government was instituted, people

lived in the State of Nature, when there was no organized political life. During this period men obeyed no laws but were subject to general principles inherent in nature itself, called the Laws of Nature, and every man enjoyed natural rights. All the three writers differ from one another regarding their interpretation of the State of Nature.

According to Hobbes, the State of Nature was one of war. "It is a State of perpetual strife among the members of the society; a war of all against all...a State of constant struggle, of fierce and brutal competition, and of distrust and suspicion." "Man's life", says Hobbes, "was solitary, poor, nasty, brutish and short". Men were essentially selfish; their bodily and mental powers were equal, and, therefore, there was a natural fear in their hearts. Suspicion bred enmity and enmity developed in a State of constant war. There were no legal rights, but natural rights based on utility and reason. Might alone determined right, and man's rights were his natural powers. Locke says that the State of Nature was one of equality and freedom. Peace prevailed and men were guided in their dealings by the instincts of reason and justice. There were moral laws. Rousseau

depicts the State of Nature as a condition of ideal happiness. There was no sovereign, no subjects, no law and no restrictions. There was unrestricted freedom, and human conduct was based on emotions of self-interest and pity for others.

Hobbes, Locke and Rousseau give different reasons why people formed a political compact. According to Hobbes, there was no security of person or property in that State of war, and no common authority to enforce natural rights. Locke also finds difficulty in interpreting and enforcing the Natural Law. "In the State of Nature every man must be his own law court, and every man his own policeman." There was a lawless minority in the State of Nature, and peaceable people had to take law in their own hands. Rousseau thought that the condition of ideal happiness could not continue as the growing population and advancing civilization brought evils.

The State of Nature, because it was either too good to last or too bad to exist, became intolerable. People formed themselves into a civil society and established a civil authority giving up their natural rights in return for common protection. According to Hobbes,

men agreed to submit to a common authority. The power, thus, created by uniting the natural rights of all was the sovereign. Once the contract was made, the authority of the sovereign was absolute. He was not a party to the contract, and as such was not bound to abide by the provisions of the contract. The people retained no right to withdraw power that they formerly transferred to him. Obedience was compulsory under all circumstances. Locke, on the other hand, makes the sovereign a party to the contract and bound by the provisions of the contract. In case, the sovereign violated the contract, people retained their right of withdrawing the power, they formerly assigned to him, and could establish a new government. According to Rousseau, people merged their natural rights into a common authority or general will. This contract was a source of many evils. Selfish men took advantage of it and the original terms of the contract were forgotten. The remedy was to realise that sovereignty rested with the people. Fortunately, the government was not a party to the contract. Final authority always remained in the hands of the people, and the government was the executive agent to enforce the general

will. In Rousseau's own words, "the people wills, the king executes." Thus, direct popular assembly was the true sovereign.

The theory has many merits and demerits. Hobbes upheld the absolute power of the sovereign and his theory of legal sovereignty is quite correct. He, however, failed to distinguish between the State and government, and did not realise that governments may change without destroying the State. Locke's main contribution was to recognise the limited power of the monarch, but he failed to distinguish between moral and civil laws. Revolution, however desirable, is never legal. Rousseau emphasised popular sovereignty, which served as the basis of modern democracy. He also made a careful distinction between the State and government by saying that the king can be deposed without destroying the State.

The theory is, however, criticised on the following grounds. It is historically absurd to suppose that people in the early stages of civilization could voluntarily agree to form a political organization. In fact, there are no historical records to prove it. The individual then was of little importance. It is legally defective. It is evident that such contracts had no legal basis,



for there existed no political organization to define or enforce the provisions of the contract. It is rationally untrue, for it is only a philosophical interpretation of the origin of the State. As a rational analysis, the relation of the individual to the State is not a voluntary one. Lastly, it is dangerous in the sense that it may be used to support tyranny on the one hand, and revolution or anarchy on the other.

### **The Organic Theory.**

The theory is one of the oldest and most popular theories regarding the origin and evolution of the State. The Greeks thought that political life was inherent in nature itself and the individual was merged in the State. Both Plato and Aristotle compared the State to a human body and Cicero likened the head of the State to the spirit of human body. Many writers emphasised the organic nature of the State in the Middle Ages. It was not till the ninth century that the theory was expanded to its logical conclusions. Bluntschli declared the state to be the "very image of human organism." "The State", to him, was "a living spiritual organic being." Rousseau compared the power of the State to the head of an individual, the laws and customs to the brain,

commerce, agriculture and industry to the mouth and stomach and public finance to the blood. Herbert Spencer, one of the notable exponents of the theory, drew a very elaborate analogy between the State and the biological organism. Both the animal and social bodies begin as germs, and undergo a process of continuous growth till they exhibit a great complexity of structure. As the lower type of animal is either stomach, or limb, so primitive society is all-warrior hunter or builder. As animal differs in functions and new organs with different functions appear, so society grows and division of labour follows.

The theory attempts to remove the conflict between the State and the individual by merging them into one organism. The state is like a biological organism. Men are by nature political beings, and possess a universal tendency to establish social organization and thus evolve the State. The State is the highest natural organism like plants and animals and as such is subject to the usual laws of growth, development and decay. Just as plants and animals grow, develop and die, similarly States have their origin, development and decay. Since the State is like an organism, individuals are

the basic cells of that organism. The various departments of government may be compared to the organs of living beings. Like other natural organisms, State also develops in its environment. The State represents the highest form of organised life, a sort of magnified person, as Gettel says. Just as a living organism has both physical and psychological nature, so the State possesses; it feels, wills and acts.

The theory is criticised on various grounds. No doubt a biological analogy is sound to a certain limit, and it is scientific to say that there is a close resemblance between a body-politic and human organism. But the analogy cannot be pushed too far; it is superficial. The animal organism is concrete, its cells have no individual life but the life of the parts is completely merged in the life of the whole. If a finger is cut, the whole body suffers the pain. The body-politic, on the other hand, is discrete, its units are free, and the separation or death of individuals does not affect or kill the State. All natural organisms owe their origin to pre-existing organism, but the life of the State is not derived from any other political organisation but comes from within. A living body grows and develops unconsciously, but the State-

life grows consciously. However, in a literal sense, the State is not an organism. If the theory is adopted, it would widen the scope of state-activity and individual's needs be sacrificed to the State. The theory remains useful in the sense that it emphasises the historical origin and evolution of the State.

### **The Patriarchal Theory.**

The most notable exponent of this theory is Sir Henry Maine. The theory holds that the State is the expansion of the family through various stages. At first the family as a group consisted of a man, his wife and children. The family then expanded by marriage, adoption, conquest or otherwise, and the father of the original family or failing him the eldest living male member is acknowledged as the head or Patriarch. In course of time, families developed into *gens* or houses, and settled in a village. Many houses formed the clan, which was ruled by the oldest male kinsman. The clan developed into a tribe, which was ruled by a chief or lord. Several tribes, in due course, constituted a common organized society with a common ruler or King. Common kinship, common interests and common traditions created a solidarity, which is so essential to the

organization of political life. This is the origin of the State.

The theory cannot, however, be taken as a final solution of the problem of the origin of the State. The earliest form of family life was not patriarchal everywhere. It was such in the Indo-European society. Even where it existed, it did not serve as a foundation of later institutions. The patriarchal family existed in early Rome, but we find no trace among the Jews, Greeks and Germans. The main defect of the theory is that it attributes the origin of the State to a single factor, that of kinship.

#### **The Matriarchal Theory.**

The theory states that in the primitive stage of human society, women enjoyed an unrivalled position. They held social and political status; they were supreme in the family and social groups. As a rule, descent was traced through the mother, and property passed in the female line. This form of the family is still prevalent in some people of the world—Himalayan tribes, the Tibetans and Bhutias, whose women take more than one husband.

Recent discoveries, according to Jenks, have proved that the earliest social group called a *pack* or *horde* was loosely organised for

matrimonial purposes. All the members camped and lived together. The pack was divided into several *totems*, and no one was allowed to marry in his own *totem*. Under such circumstances, kinship was recognised through women.

### Historical or Evolutionary Theory.

The State is neither the handi-work of God, nor the result of a superior physical force, nor the creation of mutual contract, nor even a mere expansion of the family. "It is", says Burgess, "the product of history." It is a matter of historical growth, and forms a gradual and continuous development of human society. In the beginning, there were only imperfect institutions, then slowly and steadily they developed into improved forms and then a universal political organization came into being. The basis of the State lies in the sociality of human nature. Individuals, through their natural tendencies of association and cooperative effort, formed a society of their own. Later on, family life, bonds of kinship and religion and need for order and protection created organization and authority. It has already been stated how the family was the first organized unit of social life and how families developed into *gens*, clans and tribes.

The feeling of kinship, common economic needs and common traditions created a solidarity among the members and established a political life. Religion helped a lot in suppressing anarchy and teaching reverence to authority. The position of the ruler was also made secure by virtue of his divine right. But as wealth increased and civilization advanced, there arose the necessity of regulating the relation of persons and things. People felt the need of common rules regarding their mutual relations, control and transfer of property and settlement of disputes. This was the beginning of law and government. Physical force was, of course, essential to preserve society in the first instance. With the clash of physical forces, the relation of the ruler and the ruled was established. Thus, man is, as Aristotle said, a political animal, and he made the crude beginnings of the State.

Political consciousness first appeared in the minds of a few individuals, and then spread among others, so much so that it became general. Men first learned to obey and then to govern. They made a conscious effort and established various forms of States. The State has not achieved its ideal, but is still in the process of growth and making.

Thus, it will be seen that all the best elements of the various theories have been combined into one theory, and a rational interpretation of the origin of the State is formulated.

### **Emergence of the Individual.**

If we trace the relation of the individual and the State, we find that the individual emerged from the struggle by stages. In ancient times, both the ruler and the ruled lived for the State. In India, as elsewhere, State was everything. In Greece, the Hellenic State was all in all; the citizen lived for the State. In Rome also, the State came first, but it did recognise the legal rights of the individual. It was for the first time in the Middle Ages that the freedom of the individual was emphasised. The Christian Church taught the dignity of man. The Muslim State enforced the importance and responsibilities of the individual. During the period of Renaissance, there was a reaction and the State was regarded the highest form of organisation. The modern political theory holds that the State exists for the individual and not the individual for the State.

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## **CHAPTER IV.**

### **CITIZEN—HIS RIGHTS AND DUTIES**

#### **Development of the Idea of Citizenship.**

The word citizen is derived from the Latin word 'Civitas', meaning city. Citizen, thus, literally meant a resident of a city or town. In a political sense, it has a much wider meaning. As a Greek State was a city, the word citizen denoted a person who enjoyed all state-rights, which consisted in the performance of judicial and executive functions of the government of the city. Aristotle defined a citizen as one, who was a resident of the city and participated in all legal privileges. Citizenship-rights were confined to those persons, who had leisure and ability. Thus, in the Greek State, all resident members of the city were not citizens; only such persons were citizens as possessed time and ability to take part in the actual administration of the State. Artisans, mechanics and slaves had no time, and were debarred from becoming citizen. This is a narrow view of citizenship.

The Romans took a wider view of citizenship than that of the Greeks. Any person, to whom the metropolitan city extended the privilege of enjoying rights of Roman citizenship,

whether he lived in the city or a village, was a citizen. In the city itself, there was a majority of the inhabitants, who were halots or slaves; they enjoyed no rights but worked for the Patricians or citizens. The glory of extending the personal rights of citizens to all persons goes to Rome. While Rome was still a small city-state; the Plebs succeeded in obtaining the same rights as Patricians according to the famous Twelve-Tables. With the expansion of the Roman Republic, the rights of citizenship were gradually extended to Italian tribes. When Augustus Caesar established the Empire on the ruins of the Republic, the condition of the Roman subjects in the subject-provinces became better. The Edict of Caracalla declared all subjects of the Roman Empire to be the 'citizens of Rome' and as such were given the same private rights irrespective of their nationality. Finally, the great Code of Justinian completely abolished the distinction between citizen and non-citizen by treating all men as equal.

In the Middle Ages, the privileged classes and the feudal nobility alone enjoyed citizenship-rights.

After the Industrial Revolution, however.

political rights, which were previously monopolised by the privileged classes, came to be shared by all.

### **Modern Views.**

The word citizen in the modern conception is used in a much wider sense. A citizen is a resident member of a nation-state, who enjoys rights, civil and political, owes allegiance to his state and directly shares in the exercise of sovereignty. In every modern state, citizenship extends to all its members, whether residing in a town or village.

### **Citizenship-Defined.**

Citizenship may be defined as a condition of life, which consists in the enjoyment of all the rights, whether civil or political, by the individual as a member of the state. The individual cannot be isolated from society; associations play an important part in the development of his personality. The individual is throughout attached to his family, community, groups, village or town. True citizenship is not the partial patriotism of the village or the state; it is a sentiment, which is produced in the individual's heart, when he believes in the individual and collective importance

of all groups. No person can ignore the State, nor can he overlook his obligation to the various units of the State. A true citizen is one, who has so adjusted his loyalties to the State and groups that there remains no conflict in his life as a member of several associations. It is only when there is a right ordering of loyalties that the individual can enjoy his rights and perform his duties.

### **Aliens—Status and Disabilities.**

An alien is that person, who for the time-being resides in a state, owes his allegiance to a foreign state, and enjoys only civil rights and not political privileges. There are two kinds of aliens; those, who are resident or domiciled and those, who are merely temporary so-journers. Aliens have a definite status of their own. All aliens enjoy civil rights such as the protection of their person and property. They can like other members of the State sue and be sued in a court of law. Since they do not enjoy political rights, they are not liable to conscription in the army.

Aliens labour under a number of disabilities. Till recently, they were not allowed to acquire or dispose of any real or personal property in

any state. Now they can hold property under certain restrictions. Some states make a distinction between the aliens themselves and prefer aliens of one nationality to those of the other. The Jews are treated on different lines in Germany and Russia. Sometimes, aliens are expelled from the territory and are often refused admission. But, nowhere they enjoy political rights.

### **Citizen, Subjects and Electors.**

The theory of sovereignty implies that all individuals, whether citizens or non-citizens are the subjects of the State. In modern time, however, the word 'subject' is looked on with disfavour as it usually means a member of a dependent country. An elector is one, who is legally entitled to use his right of vote. Citizens, who possess the right of vote are electors. Thus, all citizens are electors. A minor son of a citizen is a member but not an elector. In America, a naturalised alien is both a citizen and an elector but he cannot vote in the Presidential election.

### **Citizenship—how Determined or Acquired.**

Citizenship is determined in several ways;

it may be acquired firstly by descent, secondly by the incidence of 'birth' and thirdly by grant or conferment.

Citizenship, in the first instance, is determined by descent or by the nationality of one's parents. According to the Roman principle of *Jus Sanguinis* or blood-relationship, all children born of national subjects *ipso facto* become citizens of that state irrespective of the place of birth; and children born of alien parents within the state are aliens. The principle is adopted in Austria, Italy and other states. Thus, a child born to an Italian couple in India will be the citizen of Italy, but a child born to an Indian couple in Italy will be considered as a citizen of India.

Citizenship, in the second instance, is determined by the incidence of birth or by the place of birth. According to the *Jus Soli* principle, all children born in a certain state become the citizens of that state irrespective of their parentage, while children born of citizens abroad are aliens. This principle is followed in Argentine and other states. If a child is born to an Indian couple in Argentine, he automatically becomes a citizen of Argentine, but if a child is born

to an Argentine couple in India, he will be deprived of Argentine citizenship.

Some states notably England and America have adopted a mixed or dual principle. They follow the *Jus Sanguinis* principle in so far as the nationality of the children of their own citizens is concerned, but adopt the *Jus Soli* principle so far as the nationality of the children of aliens is concerned. Consequently, all children born of English or American parents in any part of the world are the citizens of England or America, as the case may be; and all children born of alien parents in the territories of England or America are also the citizens of England or America.

Sometimes, it happens that a person acquires a dual nationality. Thus, a person born of English parents in France is an English citizen according to the law of England, but he is at the same time a citizen of France according to the law of France. The difficulty is solved by allowing the particular individual to choose between the two citizenships on attaining the age of majority.

The *Jus Sanguinis* principle is sound and logical, but its demerit lies in the difficulty of

proving one's nationality. It is natural that a child may belong to the nationality of her parents, no matter where he is born. Sometimes, it becomes difficult to prove one's nationality in a foreign state. The *Jus Soli* principle, on the other hand, is illogical, but its main merit lies in the fact that citizenship can be easily proved by the birth register.

Citizenship may also be acquired by means of grant or conferment. In a broad sense, it is called the process of naturalisation. Naturalisation proper means the fulfilment of certain conditions and compliance with various formalities, which are not, however, similar in all states. For example, a period of five years' residence is required for an alien to apply for citizenship-rights in England and America. Naturalisation, in a broader sense, means the conferment of citizenship on an alien in many other ways. Many illegitimate children of citizen father and alien mother were legitimized. Children were naturalised through the naturalisation of parents. By adoption, the child acquired the nationality of the adopters. When a citizen married an alien wife, she also became a citizen. Thus, by marriage a woman loses her nationality and acquires the



nationality of her husband. As soon as an alien purchased some real property in the state, he acquired the right of citizenship of that state. An alien by accepting a post under a foreign government becomes the citizen of that state. An alien becomes a citizen through the operation of the law of domicile or residence. In case of conquest or annexation, a foreign citizenship is conferred on the natives.

### **Citizenship—How Lost.**

When a citizen ceases to owe his allegiance to the State to which he belongs, he loses his status as a citizen. This happens when the individual acts in such a way that he is no longer entitled to the enjoyment of citizenship-rights. If a woman marries an alien, she loses her former citizenship. In case, an individual is absent from his country for a long time, as for example ten years in Germany and France, he is no longer a citizen of that state. If an individual does not get himself naturalised before the expiry of the prescribed time, he becomes a stateless citizen and belongs to no state. Sometimes, a person voluntarily withdraws his rights of citizenship and acquires such rights in a foreign state, he, thereby, loses his former nationality. Russia and Turkey, however, cling to the old prin-

oiple, and do not recognise foreign citizenship when their nationals rejoin their states. If a person is condemned by a judicial court on grounds of desertion from state service or conviction for heinous crimes, he ceases to be a citizen of the state. When a state expels or dismisses a state-servant, it deprives him of his privileges as a citizen. A person loses his citizenship-right, the moment he accepts service under a foreign government.

### **Essentials of Good Citizenship.**

The problem is what constitutes good citizenship. The aim of every organized society is to produce a better type of individuals. Similarly, each state is concerned with the promotion of a better type of citizenship. An individual in order to be a good citizen must acquire a number of good qualities, which are essential to the collective good of society. An individual should be public-spirited, in the first instance. He must avoid conflicts and cooperate with other people, and be ready to stand for their rights. He should further be willing to serve on public bodies and contribute as much as possible to the good of society. He should, as a rule, think of solving the Civic problems with an open and unprejudiced mind.

A good citizen always votes cautiously and rightly, and is not affected by considerations of kinship, friendship or party allegiance. A good citizen is known for his self-reliance and self-control; he does not live on the income of others, but pursues his own calling or profession to earn his livelihood. He receives a right type of education, which may widen his outlook and broaden his sympathies. Physical fitness is necessary to make the individual active and ready to perform his duties. A citizen must cultivate thrift so that he may face unforeseen calamities and also help the poor and the needy. The individual does not live for himself alone but for others as well. A citizen has always respect for the law of the land. It is both in the interests of the individual and the community that he should be law-abiding.

#### **Hindrances to Good Citizenship.**

Modern political life is marked by the presence of many evils, which form hindrances in the way of the individual to become a good citizen. An average citizen in modern time is indifferent and does not take an active part in the politics of the country. It is due to an indulgent spirit in him that he does not perform his duties. The vast size of the modern

state reduces the individual to a position of little importance; he thinks his vote does not count much and, thus, he neglects to vote. The individual finds it difficult to hold fast to his convictions and to fight for them, and, consequently, keeps away from public life. There are such interests as arts, science, literature, sports, trade and commerce, which keep an ordinary citizen busy and deprive him of an opportunity to reflect on public questions.

Private interest ignores the good of society. Individuals are selfish and are after their own private interests. They buy votes, and when they are elected they earn money through illegal ways. Different sections of the people choose particular candidates to avoid the burden of taxes and to shift it to others. In order to win votes, members show special favours to the electors of a particular locality.

Party-spirit runs high. Party-system is not bad in itself, but when it is not directed towards the common good, it proves dangerous to public peace and welfare.

### Remedies.

There are a number of remedies advocated. It is said that if proportional representation

is adopted, it will ensure representative of minorities in the legislature according to their voting strength. In this way, no class or people shall remain unrepresented and indifferent towards politics. The state should make it obligatory on its citizens to exercise his right of vote. In some Swiss Cantons and Belgium there is obligatory voting, but voting under compulsion has its own abuses. Direct legislation will stimulate interest in the affairs of government. The electorate must be entitled to initiate bills on legislation and the legislature may also refer some legislative measures to the electorate for their final decision. Election laws are to be modified to weaken party organizations and to arouse interests in the individual voter. Further, strict laws should be enforced to guard against breaches of public trust.

On the ethical side, practical training and moral education are necessary. The individual should be directed to use knowledge for the sake of public good, and appeals be made to maintain one's dignity and honour.

#### **Extension of the Right of Citizenship— Problem of Modern States.**

The principal problem of a modern nation-state is to extend the right of citizenship to

villagers, women and the so-called lower orders or working classes. From the ethical point of view, society is based on a common conception of a common good, that all persons who possess 'will' and 'reason' contribute their share to common good. Citizenship-rights or opportunities to contribute to the common good should be given to all. From the political and economic points of view, a state wins greater loyalty by allowing equal rights to all. A democratic state is always strongest in the long run.

Modern scientific inventions have completely undermined the importance of village life, and has made it incumbent upon us to reorganise the economic and Civic life of the Indian village.

Though Plato insisted that the difference between men and women was of degree and not of kind, and that the fair sex should be given the same political privileges, it was not, however, till the end of the eighteenth century that women got some rights. A nation that treats its women as slaves commits a double suicide; one half of the economic and industrial energy is wasted, and the stupidity and ignorance of women makes their children stupid and ignorant.

A very large part of human energy, talent

and gifts are lost, because the lower orders or the working classes are not given the opportunities they can utilise. In India, the problem of untouchability remains, and the aristocratic classes look down upon the so-called lower classes.

### **Rights and Duties-Defined.**

As stated before, citizenship is a condition of life, which guarantees to the individual the enjoyment of both civil and political rights. It is through the exercise of rights and the performance of duties that an individual becomes a citizen. Rights and duties arise out of social relationships, and are the basis of an organised society.

Mankind, at present, suffers from two kinds of inequalities-inequality of natural endowments and inequality of opportunities. Nature has not been equal in the award of gifts: all men are not born with the same health, the same intelligence, and the same moral sense. Besides, all do not get the same opportunities in life. Some get better chances to improve their lot on account of their status, wealth and calling, others are handicapped and are not in a position to develop their capacities. Inequality of

opportunity, thus, accentuates inequality of natural endowment. "To him that hath is given and from him who hath not is taken away even that which he hath".

Human society is not perfect, but such a condition of life is not desirable. Society should offer the same opportunities to all. Nature has endowed every man with certain powers of thought and action, but it is not possible for him to develop these latent capacities unless he gets proper opportunities. Equality is a demand of our moral nature. The individual by utilising opportunities and unfolding his capacities develops his personality. The larger the number of men to whom opportunities for self-improvement are given, the greater will be their contribution to social progress.

The opportunities given by society to individuals are called rights. Every man has natural powers, but these powers are not rights unless they are recognised by society and opportunities are offered for their exercise. A power in order to be a right requires a social recognition. "Rights arise", says Professor Gilchrist, "from individuals as members of society



and from the recognition that, for society, there is an ultimate good which may be reached by the development of powers inherent in every individual. The consciousness of the common interest turns powers into rights; and the only proper sense in which we can speak of natural rights is as rights necessary to the ethical development of man as man." "Rights are nothing more and nothing less than those social conditions that are necessary and favourable to the development of personality." More accurately, a right is a claim recognised by society. "Right is one man's capacity or power of exacting from another or others acts or forbearances." A man may carry out his own wishes by his force or might, but the enjoyment of a right depends not on one's strength but on the force of society.

Duty means an obligation to do or not to do a certain thing. It implies that "a person is bound or ought to do or not to do something, to further the wishes of another or others, either actively or passively." If it is my right to walk by the road side, it is my duty to let other walk in the similar manner.

#### **Co-rrlation between Rights and Duties.**

It is said that rights and duties are correla-

tive or interdependent or one is a counterpart of the other. All mean the same thing—that rights and duties are so closely related and one is so dependent on the other that one cannot be separated from the other. They go together.

Every State is a politically organised society of individuals. Any person who owes allegiance to the State and is its citizen, enjoys rights, which are guaranteed by that State and is further required to perform certain duties. In other words, a citizen is that member of the State, who enjoys civil and political rights and in return fulfils certain obligations. It is his political life.

These rights and duties are correlated, one cannot exist without the other. There is no right without a duty, and there is no duty without a right. Whenever, we talk of a certain right, we necessarily bear in mind a duty, and whenever we think of a duty, we do not forget the right. They are the two aspects of the same thing. Political life consists in the enjoyment of recognised rights and the fulfilment of obligatory duties. Rights and duties are, thus, the two aspects of political life.

Every right implies a corresponding duty.

Rights and duties are not independent of each other. One cannot expect to enjoy a right unless he is prepared to perform the duty attached to it. No person can say that he will enjoy rights, and will not perform duties. If he has to enjoy a right, he must also perform a duty. Every individual has a right to his personal security. Now he cannot enjoy this right unless he safeguards the security of others. No person can say "I will enjoy my right to personal safety, and will at the same time molest others."

Every duty is corresponding in its nature. Similar rights have similar duties. One's duty implies that he recognises a similar right for others. What is my right from my point of view becomes the duty of others, and what is my duty becomes the right of others. I have a right to the security of my property, now the same is the duty of others, that is, it is their duty to secure my property. In order to enjoy this privilege, I safeguard the interest of others; thus, the same becomes the right of others.

Moral and legal rights imply corresponding moral and legal duties. Just as legal rights are enforceable in a court of law, similarly

legal duties are also enforceable. Just as a moral right has no legal force, similarly a moral duty is devoid of a legal basis. Parents have a moral right to be respected, but its infringement cannot be punished.

In an organised society, all persons enjoy similar rights. If one person has a right to his personal freedom, others will also enjoy the same. If there is inequality in the possession and enjoyment of rights, life as a harmonious whole will not be possible.

Rights and duties are the products of social life. It is only in society, that rights and duties are created. They lie at the basis of social life. The relation of one individual with another and of the individual or individuals with the group can only be regulated through a system of rights and duties.

The State is a coordinating authority; it offers opportunity to the individual to develop his personality, and compels him to perform his duties. If there is no political authority, no person can enjoy his right and none can be forced to fulfil any obligation.

### **Kinds of Rights.**

There are various kinds of rights. The

more important are the ideal rights, moral rights, legal rights and fundamental rights.

~~As~~ Ideal or natural rights are the gifts of nature and are born with the child. They are the inherent possession of every man, and are absolutely necessary for his development. They are neither created by the State nor demanded by the people. Thus, all individuals have a right to breathe air and light and sun to work in. The State may, however, enforce some of these rights.

Moral rights rest on the approval of public opinion. They are not enforceable by law and their infringement does not follow punishment. It is a moral right of the poor to be helped, but if a person does not help the poor, he will not be punished by the State.

Legal rights are regulated by the State and are enforced through its laws. Such rights are guaranteed to man by the State. The State justifies its existence by allowing certain rights to its members and in return receives their allegiance. They are, thus, acquired rights and are the gifts of the State. The moment a right is recognised by the State, it becomes a legal right and is enforced through the law of the

land. If any person violates it, he is punished. Legal rights are of two types—civil and political. Civil rights are enjoyed by the individual within the State such as the protection of one's life and property, freedom of speech etc. Political rights are political privileges, through the exercise of which a citizen participates in the administration of the State. A right to vote and a right to hold public offices are political rights.

All democratic states guarantee a number of fundamental rights. They are such civil and political rights as are generally included in the constitution. Since they are mentioned in the constitution, they are regarded as sacred and are valued most, for they are concerned with the primary freedom of the individual. All states do not have written constitutions, but they guarantee all such rights as is the case with England. Fundamental rights are not absolute in their nature and can be exercised to a certain limit. Every fundamental right carries with it a corresponding duty.

### **Forms of Civil Rights.**

Personal liberty or security is a civil right of every individual. Personal freedom is so

essential to the general well being of the individual that it should not be violated in any way unless so decided by a judicial court. To this effect, there is *Habeas Corpus*. Act in England, but no such law exists in India. Personal liberty also implies internal and external security; there should be absence of physical restraint within the boundaries of the State, and protection of the individual's life against foreign aggression. This right is not, however, absolute, for the State can call upon its citizens to join the army in case of foreign invasion.

Self-defence is a civil right. The individual can use force against force to defend his physical being, but the measure of force should not exceed the limit and should be proportionate, necessary and reasonable.

Private property in some form or other is essential to the general well-being of the individual. He should be allowed to acquire and use his property. Thus, a right to property is a civil right. The corresponding duty, however, remains, that the individual has to place his property at the disposal of the State in times of danger.

Freedom of conscience and freedom of wor-

ship are also necessary for the moral well-being of the individual. The individual should be allowed to worship in whatever manner he likes, provided he does not disturb the public peace. The individual must also enjoy liberty of thought and conscience, but must, as a duty, show toleration in religious matters.

Freedom of thought and expression is another civil right of the individual. The individual should have a right of free speech; he may be allowed to say what it pleases him provided it is not blasphemous, obscene, seditious or defamatory.

Freedom of the Press denotes that the individual has a right to print or publish any material, which is not blasphemous in character. He can further make a bonafide criticism of governmental actions. If any criticism is objectionable and injures the reputation of any person, it amounts to libel and is punishable.

Man is a social being and cannot live without society. One of his elementary rights is, therefore, of forming associations. Governments always suppress such associations as are created for subversive actions.



All individuals have a right to family. They have freedom to keep their own family relations; they can marry without hindrance and beget children. No State can, however, compel a person to marry another person.

A right to contract is one of the civil rights. The individual is at liberty to enter into contracts with other individuals, but governments always restrict those contracts, which cannot be easily fulfilled, or which are against social good.

The individual has a right to reap the advantages of social life; he is at liberty to follow any profession, unless it harms public welfare. He can further use public thorough-fares and means of communication.

It is one of the primary rights of individuals to receive free education.<sup>1</sup> It is the duty of every State to treat all its members alike in the beginning and provide free education to all children.

If an individual is qualified for a post, he has a right of employment as a government servant.

Minority problem is one of the real problems of modern governments. All communities have a right to develop their own culture and

language in their own way. No people should, therefore, be deprived of this right simply because they form a minority.

### Forms of Political Rights

Every member of the State has a right of permanent residence. He may live in whatever part of the territory he likes, unless his movements are proved dangerous in the interests of the State. In such cases, persons involved are exiled or expelled from the territory.

The individual is not only protected within the limits of the state-territory, but his person and property are even protected abroad. Every foreign government allows civil rights to aliens.

Franchise is another important political right. Through the exercise of franchise, the individual takes part in the administration of the State. Formerly, women were not enfranchised; even a small proportion of males enjoyed the right of vote. In recent times, women have also been given the right of vote. There is a tendency in favour of adult franchise or universal suffrage, which means that all male and female members of the State, who have attained the age of majority, must have the

right of vote.

In the ancient city-states of Greece and Rome, every citizen took an active part in the administration of the State. With the expansion of the size of modern state and extension of franchise, all members of the State cannot directly share in the political authority of the State. There are, thus, representative governments and every citizen has a right to be a member of the legislature, if he is duly elected by the people.

The individual as a citizen of the State has also a right to hold public offices, if he is fit to discharge its functions satisfactorily. Modern governments do not make any distinction between member and member, and offer equal opportunities to all.

Lastly, every citizen has a right of petition to redress his grievances. He can approach the competent authority and state his case for consideration. If this right is not given, the individual will have no opportunity to get rid of undue oppression.

### **Kinds of Duties.**

As stated before, every right has a duty

attached to it; a legal right has a legal duty and a moral right a moral duty. When a duty is enforceable against a person by the law of the State, it is called a legal duty. But when a duty is enjoined by the force of public opinion, it is termed as a moral duty. If a person violates a legal duty, he is punished, but no person is accountable for the infringement of a moral duty.

There are positive and negative duties. It is a compulsory duty to pay taxes, to serve on the jury, to fight for the defence of the country and so on. It is optional or negative either to perform a duty or not, such as to exercise the right of vote or to attend meetings of the legislature.

It is both a moral and legal duty to obey the laws of the State. If there is no habitual obedience on the part of the people, the State does not exist. It is necessary, therefore, to punish those, who do not obey the commands of the sovereign.

The individual has a duty to owe allegiance to the State. He serves in war, renders public service or helps public servants in the discharge of their functions, if he is called upon to do so.

The State, in return to the allegiance of the people, performs a number of duties. The state protects the interest of all classes of people whether rich or poor, capitalist or labourer. It promotes education, art, and culture and controls economic activities for the welfare of the people. It further secures justice and equity not only in the political sphere but in the social and economic life of the community as well.

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## **CHAPTER V.**

### **SOVEREIGNTY, LAW AND LIBERTY.**

#### **Nature of Sovereignty.**

An important feature that distinguishes the State from other organizations is its sovereignty. In a literal sense, sovereignty signifies the supreme power of the State. In every State there is some person or a body of persons, who are legally authorised to exercise the supreme power within the State and whose orders have a binding force on the subjects. It is not enough that the State should have a single collective will, other associations have also the same, but the will of the State dominates all other wills and overrides them in case of conflict. The will of the State is, therefore, supreme and sovereign, and all other wills, whether of individuals or associations, are subordinate to it.

#### **Definition and Meaning of Sovereignty.**

Burgess has defined sovereignty as 'original, absolute, unlimited, universal power over the individual subject, and all associations of subjects.' Sovereignty is original in the sense that it is not derived from any other source; it

exists because it is there. It is absolute, because it is supreme and there is no power over that power. It is unlimited because no restrictions are imposed on the exercise of that authority. It is universal, because it extends to all individuals and groups. Austin defined sovereign as "If a determinate human superior not in the habit of obedience to a like superior receive habitual obedience from the bulk of a given society, that determinate superior is the sovereign in that society, and the society, including the superior, is a society political and independent." Every organised society or State is marked by the presence of a person or a body of persons, who can be easily determined or fixed and whose authority is supreme in the sense that a great majority of the inhabitants habitually obey his or their orders. In England, it is the British Parliament, which is supreme and sovereign, and the laws made by it are binding on the British people. Yet, the real source of authority lies with the general electorate.

The power of the sovereign is legally unlimited and its commands are called laws. There is no power within or outside the State, which can question the validity of the laws promulgated by the sovereign. The conception

of sovereignty becomes clearer, if it is analysed further. The sovereign is internally supreme and externally independent. It is an absolute and supreme power within the State and there is no like power, which may control or supersede it. There cannot, therefore, be any rights against the authority of the State. It is the sovereign, who confers and withdraws rights. His authority is, thus, legally unfettered. He further enjoys supreme powers of law-making and administration. In short, the authority of the sovereign is supreme over all persons and associations within the boundaries of the State.

The sovereign is also externally independent. Outside the territorial limits of the State, the sovereign is free from the control or interference of other States. It is a fact that there are treaty obligations, but they do not form any limitations on the sovereignty of the State; they are mutual contracts based on mutual benefits. The sovereignty of a State cannot be divided or lost by conferring autonomy or political rights on dependent countries. It follows that the sovereignty of the State is a unit. And "if sovereignty is not absolute, no State exists; if sovereignty is divided, more



than one State exists "

### History of the Idea.

The conception of sovereignty is as old as Aristotle. The Medieval idea, however, differed from the modern one. Accordingly, the State could not be internally free owing to the existence of the feudal system and could not be externally independent on account of a general belief in the universal empire. The modern conception developed with the abolition of the feudal system and the growth of nation-states. Bodin was the first writer to use the term sovereignty, but defined it as the absolute power of the monarch. Grotius developed the ideas of internal and external sovereignty of the State. He recognised the mutual sovereignty of States and, thus, laid the foundation of international law.

Hobbes upheld the absolute power of the monarch. Locke believed in the limited power of the sovereign. Rousseau propounded the modern conception of an absolute sovereign calling it the *general will* of the people.

Next came the jurists, Bentham and Austin. Both attributed sovereignty to the supreme governmental organ, whose orders formed the

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laws of the land.

The modern conception of sovereignty has undergone a great change during recent times. There is a set of writers, variously called as "pluralists," "guild-socialists," "syndicalists" and "group thinkers," who deny the sovereignty of the State, and hold that the social, industrial and political groups collectively exercise greater influence on the life of the individual than the State. State is an aggregate of these groups rather than of individuals. State-sovereignty is, therefore, a fiction without any value. The individual owes a double allegiance, one to the State and the other to the various associations of which he is a member. The groups enjoy wide autonomy but the State may act as an umpire in case of conflicts. The groups and the State are species of the same genus.

#### Various Uses of Sovereignty.

The first distinction is made between the Titular and Actual sovereigns. A titular sovereign is one, who is a mere figure-head; the actual power being in the hands of others. With the growth of democracy, the king is only a limited or constitutional monarch, the real authority is vested in the executive. The

King of England is a constitutional monarch. On the other hand, actual sovereign is one who enjoys absolute power, such as the Czar of Russia possessed.

Another distinction is made between *De-facto* and *De-Jure* sovereigns. A *De-Jure* sovereign has a legal claim to the obedience of the people. King Amanullah was formerly the *De-Jure* sovereign of Afghanistan. A *De-Jure* sovereign may be deposed or killed as a result of a war or revolution. Thus, a person who succeeds him becomes a *De-facto* sovereign. He is actually obeyed by the people, but his claim to the throne does not rest on legal grounds. A *De-facto* sovereign may be a usurper, a military dictator or a victorious general. Bachcha Saqqa was the *De-facto* sovereign of Afghanistan. The distinction between the *De-facto* and *De-Jure* sovereign cannot be maintained for all times. A *De-Jure* sovereign, who loses his throne and regains it becomes a *De-facto* sovereign. A *De-facto* ruler attains a legal sanction in due course and becomes a *De-facto* sovereign. Zahir Shah is now a *De-jure* sovereign of Afghanistan.

A third distinction is made between the

legal and political sovereigns. The legal sovereign is the supreme law-making power within the State. The sovereign power, according to Austin, knows no legal limitations. It is the legal idea of sovereignty and believes in the absolute, unlimited, original and final authority of the State. The British Parliament is the legal sovereign. "Behind the sovereign, which the lawyer recognises", says Professor Dicey, "there is another sovereign, to which the legal sovereign must bow." As a matter of fact, there are behind the legal sovereign powerful influences at work, which may constitute a political sovereign. In England, the electorate is the real or political sovereign, for the British Parliament carries out its will.

The theory of popular sovereignty affirms that the ultimate power within the State lies in the people themselves. It is the mass of population, which enjoys the supreme power of making or unmaking the government. Thus, the final source of authority lies in the mass of the people.

### **The Attributes of Sovereignty.**

Sovereignty has a number of characteristics or attributes.

In the first place, it is said that it is *exclusive*. It is absolute. There is always supreme power within the State known as sovereignty and this power excludes all other powers. No other powers can be recognised except the sovereign power of the State.

It is *universal* or all-comprehensive. The sovereignty of the State comprehends within its scope all persons, things and organizations. It is, therefore, all-embracing in its nature.

It is *permanent*. As States do not die, though governments may change, similarly sovereign power is permanent and does not die. The main quality of the State is its unity or sovereignty, and when it is said that the State does not die, it really means that its quality or sovereignty always remains.

It is *inalienable*. The sovereignty of the State cannot be alienated or transferred. If sovereignty is taken away, the State is automatically destroyed. A change of government does not constitute a change of sovereignty.

It is *imprescriptible*. It means that sovereign power cannot be lost by a mere non-use or lapse of time. The fact that it was not used

for sometimes does not mean that it does not exist.

It is *indivisible*. The sovereignty of the State is one and a unity. It cannot be divided. It is one supreme will and does not consist of many wills. If there are many wills, a conflict of wills is bound to arise, which would mar the unity of the State.

### Location of Sovereignty.

Now the problem is where does sovereignty reside? Does it reside in the legislature or the executive or the judiciary or the electorate or the people or a sum-total of these or of some of them?

When pure democracy prevailed and every adult male citizen took part in the actual administration of the State, the legal and political aspects of sovereignty coincided. Popular will and State-authority meant the same thing. But with the growth of modern indirect democracy, less than one half of the total population is reduced to the position of electors and they elect their representatives to the legislature. Thus, the people are represented by the electors, and the electors by their representatives. It is, then, the legislature, as the British

Parliament in England, which constitutes the legal sovereign; the electorate forms the political sovereign; and the mass of the people represents the popular sovereign.

The British Parliament, which is the legal sovereign, is definitely organised and its commands are laws. But it is difficult to determine the political sovereign. As soon as an attempt is made to find out the person or that body of persons who compose the real sovereign, everything is vague, indistinct and confusing. The political sovereign may mean the mass of the population, the electorate, as well as other parties such as priests, ministers, the military or landed classes. Which of these and which other forces and influences make up the political sovereign? It is difficult to determine. If we leave out every other factor and confine our attention to the sovereignty of the people, the matter still remains vague. The mass of the people may be interpreted to mean the major portion of the population which possesses the right of vote. All electors do not exercise their right of vote; the active electors may form about one-tenth of the entire citizen-body.

A distinction between the political and

popular sovereignty does not amount to a dual sovereignty of the State. Sovereignty is an attribute, a quality, something abstract; hence it cannot be divided. There are no two separate sovereigns; they are the two different manifestations of one and the same sovereignty, through two different channels.

It is a fact that the political and popular phases of sovereignty, do really influence the legal aspect of sovereignty. Theoretically, the British Parliament can do everything, but it cannot for a considerable period defy the will and opinion of the electors and the people respectively. But law does not recognise the first two phases of sovereignty, for they cannot formulate laws, which the law-courts may apply. The legal sovereign is the supreme law-making power within the State, whose orders are the laws of the land. The third phase of sovereignty is, therefore, a legal one. The sovereignty of the State is one, but it is manifested through three different channels—popular, political and legal.

The problem remains where does it reside? Does it reside in the organisation that can make or amend the constitution? Or, does it rest with the law-making power? The govern-



ment of a State is limited in its powers by its own constitution, and is subject to the authority of that body, which may legally change or modify that system. The highest authority, which creates constitution forms the direct will or sovereignty of the State. But this authority is limited in many ways. The amending power is seldom exercised; in spite of it, the will of the State is still expressed through other organs and lastly it can only act in the manner legally prescribed by the government. This power is not, therefore, absolute and such a limited power cannot form the sovereignty of the State.

As a last resort, it is held that sovereignty is located in the sum-total of all law-making bodies in the government. They include the legislature—national and local; courts in so far as they create laws; executive, when it adds to law by proclamations and ordinances; conventions, when they amend the constitution and the electorate when they exercise their law-making power. The sovereignty of the State is manifested through a number of channels and through the working of its government.

#### **‘Criticism of the Theory.**

The theory is criticised on many grounds.

It is said that there are many practical limitations on the power of the sovereign both internally and externally. According to Bryce, "there has never really existed in the world any person or any body of persons enjoying uncontrolled power." Bluntschli says, "The State as a whole is not almighty, for it is limited externally by the rights of other States, and internally by its own nature and by the right of its individual members." But sovereignty is the source of all individual rights, how can individual rights limit the power of the sovereign?

It is said that the sovereignty of the State is limited by divine law and the will of the subjects. God is a legal superior. No government can override the customs, traditions, religion, institutions and opinion of its subjects. These limitations are not legal, but are self-imposed. It is a self-limitation, and the people have themselves imposed upon them such restrictions.

Externally, it is argued, that sovereignty is limited by international law. As a matter of fact, international law is not law in the strict sense of the term. There is no political power

to enforce that law. Again, international obligations are based on mutual contracts and mutual benefits, and do not limit the sovereign power of any state.

### Definition of Law.

Austin defined law as the command of the sovereign. The definition is defective, for as Sir Henry Maine says, it does not take into account the various customs, usages and conventions, which equally have the force of law. Commands may only mean the will of the issuing authority irrespective of any limit. Further, all laws are not in the nature of commands; but are mere assertions. Woodrow Wilson, therefore, defined law as "that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of government." Similarly, Holland characterised law as "a general rule of human action enforced by a sovereign political authority." Law is, in short, a set of those rules of human conduct, which determine the relations of the individuals themselves in an organised society and of the individuals and the State.

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### Nature of Law.

Law expresses the will of the State. State is an organised society of individuals occupying a definite territory. In a despotic State, it is the will of the ruler, which makes the law. But even a despot takes into consideration the customs, habits and usages of the people while making the law. "What the king permits, he commands" is, therefore, the principle. In a democratic State, law manifests the will of the people as represented by a popularly elected legislature. Theoretically, no law can be morally binding, if it does not meet the requirements and special needs of the people, for whom it is made, no matter whatever be the origin of this law. Law should not, therefore, be an imposition of the will of the ruler or any other governing class without any reference to the needs and welfare of the the people. Law and morality, are, therefore closely related. Law has the sanction of the political authority, while morality depends on the approval of public opinion or individual conscience. Law and morality go together. Laws, in order to be effective, must represent the moral standard of the people. If a law goes beyond the moral ideas of a people, it remains ineffective and falls into disuse. But no law

can directly make the people moral; they may help the individual to lead a moral life. Thus, Gettel says, "Law marks time to moral progress."

### Kinds of Law.

*Natural law* establishes a relation between cause and effect regarding a certain phenomenon. In other words, it governs the occurrence of phenomenon in nature. It is not made by human beings, but it may be discovered by human experience. As for example, the law of gravitation means that the earth attracts to itself all bodies in the air. The law was there, but it was later on discovered by observation. If something happens against a natural law, the law is wrongly understood and not that the phenomenon is wrong. The real laws of nature are definite and unchangeable.

*Moral law* governs the conduct of individuals as members of society and not of the State. These rules are *morally* and not legally binding on individuals, and, thus, their violation does not involve any punishment. Such laws are not recognised by the State but by the public opinion, and play an important part in the regulation of human conduct. Maral

laws are not fixed but change from time to time according to the moral development of society.

Social or civil law means those rules of human conduct, which govern the social relations of the individuals in dealing with one another. It is also known as private law, but the State enforces only such private law as is recognised by it.

Political or public law determines the relation of the individuals to the State. Both civil and political laws are part of the law of the State as made by a competent authority.

Positive law, which includes both civil and political law, is definitely *laid down* by a legally instituted authority to govern the human conduct. Positive law requires individuals to act according to them, and their infringement follows a punishment. They are, however, capable of being amended or modified.

Ordinary law or statute is a law passed by the ordinary legislative body to determine the relations of citizens themselves and of the citizens and the State. Ordinary law is that part of positive law, which is made by the legislature of the State.

Public law is subdivided into constitutional

law, administrative law and international law.

Constitutional law consists of a body of fundamental rules, which determines the form and structure of the government and the rights and duties of the citizens.

Administrative law fixes the organization of government and regulates the relations of the administrative authorities towards its subordinate officials and private citizens.

International law is a body of those rules, which determines the relation of one State to another in their dealing in times of war, peace and neutrality.

Common law is an important part of law in England. It consists of those customs and usages, which prevailed in England at the time of the Norman conquest. It has now been codified.

The Rule of law means the reign of law. The ordinary law of the land is supreme, and every person whether an officer of the State or a member is subject to that law alone. No arbitrary authority, no prerogative, not even discretionary power of the government can override it. No person can be punished for any offence, unless it is proved in a court of law.

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### Sources of Law.

Positive law is the law issued by an "authorised public organ acting within the sphere of its legal competence." But the "authorised organ" has to act with certain limitations imposed upon it by customs, traditions, usages and the general tone of the community.

Custom has always played an important part in the making and determination of law. Custom represents the generally accepted habits of a people. It is a matter of slow growth and of experience. No society of individuals submits to a law, which goes contrary to its customs. But when customs gain the support of a definite authority, they become law. The whole of the English Common Law consists of customs and usages.

Religion is another factor, which exercises a great influence on the lives of the people. Religion has been the very breath of life. Religion prescribes definite standards and ways of living. Formerly, religion and law went hand in hand and the various governments accepted and adopted the religious principles *in toto*. With the separation of the Church and the State, things were changed. Even to:



day, religion forms an influential factor in the body-politic. No law can be accepted or enforced, if it goes against the provisions of a certain religion professed by a section of the community.

Scientific commentaries or expositions of great writers on law have often served as a guide to the law courts in deciding cases, and have also formed a basis for future enactment. Every religion had its originator, who was also the law-giver. Sometimes, such religious principles were studied, arranged and codified such as the Code of Mannu among the Hindus and the *Shariat* among the Mussalmans.

Then, there are judicial decisions, which form a part of the law of the land. Sometimes, judges give their decisions on points of law, which are not covered by any legislative enactment. Such decisions serve as precedents and are binding on the law-courts till they are revised by a competent authority. A judge is the authoritative interpreter of law in the country.

Legislation as a source of law is of modern growth. The nature of legislative authority and the nature of laws have always changed.

At first, it was the Patriarch or the king, who made the law. But with the growth of modern democracy, legislation has been the work of representative bodies. No law made by a legal authority can be acceptable unless it conforms to the habits and customs of the people. Law is not, therefore, the creation of individuals, but of the special needs and requirements of the people.

When the existing law cannot be suitably applied to a specified case or when a new point of law arises, over which the law is silent, the judges are obliged to decide cases according to the general principles of justice. Such decisions form precedents and have the force of law for future guidance. They are known as "equity-made laws."

### Meaning of Liberty.

In every day usage, liberty means a mere license or freedom of action or the absence of restraint. Correctly speaking, liberty is a negative term. Liberty means a restraint on the individual's freedom of action. Liberty may, therefore, be defined as "the freedom to do anything *provided* one does not interfere with a like freedom on the part of others."

"Liberty consists in the power to do everything that does not injure another." Liberty is not an unrestricted action.

### **Liberty and Authority.**

Who can restrict the freedom of one's actions? There should be some authority to guarantee the liberty of all and to secure the rights of all. The organization that can fulfil this purpose is the State, which has a sovereign authority. It is the duty of the State to maintain such a condition of life as may enable individuals to enjoy the fullest opportunities to develop their best selves without undue and unnecessary restraint on the part of the government.

Liberty without necessary restraints means anarchy. If every body wants to have his own way, naturally none will have anything, or at the most only those, who possess power to subdue others to their will, will have freedom and none else. Liberty, therefore, can only exist under an organised system of restraint.

### **Liberty and Rights.**

The State guarantees liberty to the individual, so that he may utilise the opportunities that are, thus, offered to him, and develop his

inherent capacities with a view to contribute as largely as possible to the common good of society. Only such restrictions are desirable as do not limit an individual's opportunities for free development. These opportunities when they are offered by the State become the rights of the individual. Liberty, therefore, is the product of rights. Without rights, there is no freedom for the individual as a citizen of the State. Rights ensure the enjoyment of liberty. Prof. Laski says, "without rights there can be no liberty because without rights men are the subject of law unrelated to the needs of personality."

### **Liberty and Law.**

Liberty is secured through the operation of law. Laws are the necessary guarantees of liberty. How can people enjoy rights and liberty? It is only through the laws made by the government that the individual can enjoy rights and, thus, secure his liberty, for the latter is the product of the former. Law and liberty are, therefore, related.

### **Liberty and Sovereignty.**

Some hold that the State must not interfere with individual freedom, and that its main

function is to maintain law and order. Others held that the State should have absolute power over the individual. The question arises, if the authority of the State is absolute, how can there be individual liberty? But sovereignty of the State and liberty of the individual are not hostile to each other; they are, as a matter of fact, complimentary. Sovereignty is a safeguard of individual liberty. Liberty presupposes the existence of a sovereign authority. Sovereignty is a condition precedent to the enjoyment of liberty. It is the State-organization, which secures the liberty of all by enforcing law. The State is, therefore, the main source of real liberty. The laws of the State do not form limitations on the liberty of the individual, but they guarantee and defend individual liberty.

The sovereign power protects individuals and their liberty against two forces—against the government and against other individuals and associations of individuals. Each State determines its own form of government, the scope of its powers and the manner of their exercise. Public law prescribes the relation of individuals and groups of individuals to the State. Public law, therefore, also prescribes

the sphere of individual liberty. On it determines how far the individual is free from governmental interference. This is the negative aspect of liberty. As against individuals, the State specifies the individual freedom. This forms the positive aspect of individual liberty. It is the sovereignty of the State, which protects both the positive and negative aspects of individual liberty.

Burgess and other writers believe that there is no civil liberty in England. The British Parliament is not subject to any laws of constitution and there is no provision for the safeguarding of individual liberty. The idea is, however, wrong. In modern democratic states, it is public opinion, which really directs and controls the activities of governments. Popular will safeguards civil liberty against governmental encroachments; and constitutional provisions are no longer necessary to protect individual liberty.

#### Various Uses of Liberty.

The term liberty is used in many senses. The moral idea of liberty is, in the words of John Milton, "Know that *to be free* is the same thing as to be virtuous, to be wise—and

lastly to be magnanimous and brave."

Natural liberty is presumed to have existed in the State of Nature, when there was no political organisation. "Might was right," and under such conditions of life, it is obvious, there cannot exist any liberty.

The realistic idea of liberty signifies "the absence of unwelcome interference with one's personal activities and general conduct of life". But such a conception is contrary to the idea of authority or sovereignty. The view is an ideal rather than a practical one. On the other hand, the legal idea of liberty is the absence of restraints except those which are imposed on the human conduct under the authority of just laws.

Civil or individual liberty denotes certain privileges or immunities of the individual, with which neither the government nor any other individual can interfere. Civil liberty consists of freedom of speech, freedom of movement, security of person and property, etc. In the United States, the laws of the constitution safeguard the civil liberty of the individual. Religious liberty or freedom of worship is an aspect of civil liberty.

Political or constitutional liberty consists in the enjoyment of political rights. Such a liberty exists in a "free government," where the people also share in the political authority of the State. The individual citizen directly or indirectly controls the machinery of the State. This is called political or constitutional liberty.

National liberty is often used to designate a condition of national freedom. Externally, the State should be independent, and, internally, the citizens of the State possess both civil and political liberty.

Economic liberty is the fore-runner of political liberty. It means a right of the individual to choose his own profession, to enjoy security of employment and to reap the fruits of his labour. If wealth is concentrated in the hands of few individuals, they acquire economic superiority over others. Such a system of economic organization is undesirable. There should be democracy in industry.

According to the idealistic theory, liberty "does not consist in doing what one pleases but as one *ought*." It is a right to do something, which conforms to social justice as



established under the law.

### **Equality and Liberty.**

Liberty does not mean a special privilege to be enjoyed by some one person; it is to be shared by all. Liberty cannot exist without equality. Equality does not mean that there should be no differentiation between man and man on grounds of functions and abilities. Equality means the equality of opportunities. The State must offer similar opportunities to all and so arrange the social and political order as to enable each individual to develop his capacities. In fact, equality of opportunities does not guarantee equality of achievements.\* Some will be more benefited than others, and ultimate inequalities in accomplishments are bound to occur due to differences in natural endowments. What is required is that all individuals should be started alike in the beginning and offered similar social conditions in life. It, however, rests with the individual himself to avail himself of these opportunities to the best of his ability and effort. No body can make up natural deficiencies.

In the social sphere, equality implies that class distinctions should be removed, and no

consideration of birth, wealth or calling give undue position to some at the expense of others. Everybody is entitled to an economic minimum. The State should so arrange the politico-economic system that no willing worker should remain out of employment. Further, all citizens should enjoy similar political rights.

It will be seen, thus, that equality instead of being opposed to liberty is in reality an essential condition of it. It is only when equal opportunities are offered to all, that all can enjoy liberty. Liberty is not an end in itself, but a means to an end—the free development of human personality.

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## CHAPTER VI.

### THE CLASSIFICATION OF THE STATE.

#### The Nature of Classification.

The essential elements of the State are its territory, population, government and sovereignty. In this respect all States are alike; but they substantially differ in their forms of government. Some writers hold that the "forms of the State are synonymous with the forms of Government." Others say that as all States are similar in their essential attributes, a classification of the State is not the same as forms of government. In the latter case, States can only be classified on the basis of the 'location of sovereignty.' The above distinction is rather confusing, although it is a fact that States should always be pure in form, but governments are usually mixed. England is really a 'democratic State,' but its monarchical form of government is organised with the king and the two Houses of British Parliament containing both democratic and aristocratic elements. This is a mixed government. The classification of the State, thus, rests on the location of sovereignty and the classification of government on its form and structure—the func-

tions it performs, the manner in which its power is exercised and the personnel with whom the power rests. All this is indicated by the term constitution. Since the States are more effectively organised through their governments, they may *conveniently* be classified on the basis of the forms of their governments.

### Aristotle's Classification.

Aristotle classified States on the basis of the location of sovereignty and the end towards which the conduct of government is directed. According to the first principle, it is questioned, where does the sovereign power reside? Does it rest with a single person, a few or the many. Again, what is the motive of the government? The State is a moral entity and has a moral end, the good life. Such States as pursue the good life are *normal*, and those which do not are *perverted*. If the government is carried on in the interest of the ruled, it is a normal government but if it pursues its own selfish interests, it is a perverted form of government. Now take the abnormal forms of government. If the sovereign power is vested in a single person, it is a Monarchy, where in the hands of a few, it is an Aristocracy and where in the general body of citizens, it is a Polity. Per-

verted forms of Monarchy, Aristocracy and Polity are Tyranny, Oligarchy and Democracy. Polity, thus, means a form of government, in which the general mass of people exercises political power for the good of all, and Democracy signifies a government, where the general people use the political authority to oppress the rich. The following table illustrates Aristotle's classification of State:—

| Number of persons<br>in whom sovereignty<br>resides. | Normal<br>forms | Perverted<br>forms |
|--|-----------------|--------------------|
| One  | Monarchy        | Tyranny            |
| Few  | Aristocracy     | Oligarchy          |
| Many   | Polity          | Democracy          |

Aristotle's classification has been subject to many criticisms. In the first place, it is said that it does not suit modern conditions. Nowhere, a pure form is in existence; modern States, are compounds of two or three forms. In England, there is no pure monarchy, no pure aristocracy and no pure polity; it is a combination of all the three elements.—King, Commons and Lords. The classification is further insufficient to meet modern requirements. Modern States, unlike the Greek City-States,

are nation-States; and cannot be classified according to old principles. A classification of modern governments on the basis of the location of sovereignty is misleading as the legal and political phases of sovereignty rest with different hands. Lastly, it is said that Aristotle's classification is "mechanical rather than spiritual, quantitative rather than qualitative in character." These objections do not hold good, if it is borne in mind that Aristotle classified States on the basis of the location of *legal* sovereignty and the *end* towards which they are directed.

### Essentials of Modern States.

There is much difference between the ancient and modern States. The ancient State, as a rule, did not possess any constitution, but modern States are all constitutional governments. Ancient States depended on the will or whim of a ruler, but modern States are carried on according to certain rules and principles as are generally accepted or defined and which are collectively known as their constitutions. Professor Dicey, thus, points out that constitutional government is a government of laws or a rule of law as compared to the ancient State, which was a government of

man or a rule of man. "A State without a constitution would not be a State but a regime of anarchy." The rules or principles according to which modern governments are carried on are called their constitutions.

### Constitution—Defined.

Different writers have defined the term "constitution" in their own words, but all of them carry the same meaning. Bryce states that "the constitution of a State or nation consists of those of its rules or laws which determine the form of its government and the respective rights and duties of its citizens, and of the citizens towards the government." According to Gettel, the constitution of a State may be defined as "those fundamental principles, which determine the form of a State. The fundamental principles include the method in which the State is organised, the distribution of its sovereign powers among the various organs of government, and the scope and the manner of exercise of governmental functions." Professor Woolsey defines a constitution as "the collection of principles according to which the power of the government, the rights of the governed, and the relation between the two are adjusted." Professor Dicey defined

constitution as the aggregate of "all rules which directly or indirectly affect the distribution or the exercise of the sovereign powers in the State."

Every State has a particular system of government which is the outcome of a series of changes in the past. These changes are either revolutionary or evolutionary. Often time, a system of government develops according to the traditions, customs, usages, habits and character of a certain people. Thus, constitutions are the products of past history. A constitution may finally be defined as a body of rules or principles which being based on the past history, traditions, customs, conduct, character and general environment, determine the form and machinery of government, and define the relations of the citizens themselves and of the citizens to the State.

Every constitution prescribes limits on governmental action. What a government can do and what it cannot do. It further determines the rights and duties of subjects and groups of subjects. It provides who may participate in the exercise of political authority and to what extent and in what manner. The method of appointment of officers is also noted, and the powers of the various organs of govern-



ment are also specified. A constitution, thus, means the supreme law of the land.

### **How Constitutions are made.**

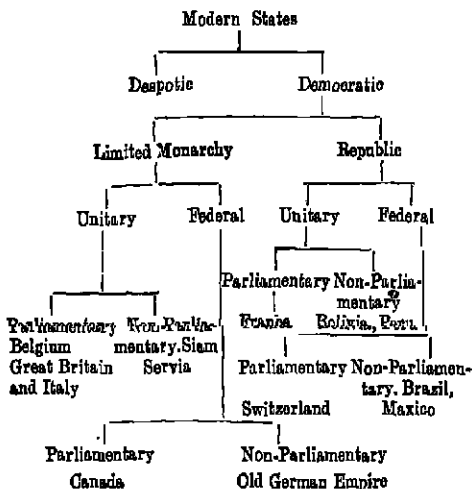
No rules are fixed as to how constitutions are made. In Japan, the constitution was given as a gift to the people by its ruler. Sometimes, a dependent country like the United States of America, may shake off the foreign yoke and formulate a constitution of its own. Often, the ruling nation allows constitutional reforms by stages to a dependency as is the case with India. Seldom it happens that a dependent country attains a constitution of its liking on its own request. But, Canada and Australia furnish such an example. Usually, a constitution grows and is the outcome of a gradual and continuous development of earlier institutions. In England, the people obtained a democratic constitution from their successive rulers.

### **Modern Classifications.**

Modern States can best be classified according to their forms of government or constitutions. Is the constitution democratic or undemocratic, unitary or federal, rigid or flexible, written or unwritten? A democratic government may further be Parliamentary, in which the legislature is supreme or Presidential, in

which the legislature and the executive have coordinating functions under the administration.

Professor Leacock classifies modern States in the first place, between the despotic and democratic States. Then, he subdivides democracies into limited monarchies and republics. He further classifies both monarchies and republics as unitary and federal. In the last, he marks out these unitary and federal governments as responsible or parliamentary and non-responsible or non-parliamentary. The following table illustrates Professor Leacock's classification of modern States :-



**Democratic and Undemocratic Constitutions.**

A democratic constitution is one, which allows the citizens to take part in the administration of the State either directly or through their own representatives. Almost all the civilised States have a democratic constitution. On the other hand, there are a number of undemocratic constitutions, which do not permit the citizens to control or influence the machinery of government.

**Monarchy.**

A State is called a monarchy, if supreme power is vested in the hands of a single individual variously known as monarch, sovereign or king. Aristotle justified the rule of one man provided he was extremely virtuous. Most of the early States were monarchies, as they brought strength to dominions and avoided anarchy and disorder. There could not be a *divided counsel*; decisions were quickly arrived at by one man and orders were promptly executed. The king was the symbol of State-unity and looked after the needs of his people. But there were some inherent defects in monarchy. No ruler, however able, can faithfully represent his subjects and know their needs. He was further irresponsible, which offered

him an opportunity to misuse his power and become an oppressor. Monarchies became hereditary, and the result was that there was no guarantee that an able ruler would have a worthy son to succeed.

### **Limited or Constitutional Monarchy.**

With the development of political consciousness among the people, the arbitrary rule of a monarch was condemned. The people began imposing restrictions on the power of the monarch either through constitutional methods or actual revolution. This gave rise to limited or constitutional monarchy, which means a supreme legal power limited by the rights of the subjects. Thus, "the people wills and the king executes" or "the constitutional monarch reigns but does not govern." No doubt, the king is above the constitution, but he is bound to respect the laws of the State. It is the representative legislature that makes laws, but it is the king, who sanctions laws. The king is the embodiment of all rights, but no power can be exercised arbitrarily. England is an example of a constitutional monarchy. In theory, all powers vest in the king, but in practice, they are exercised by Ministers responsible to the British Parliament.

### Aristocracy.

Aristocracy is a form of government, in which political authority rests with a small group of persons either elected or selected on a hereditary basis. It is regarded as the rule of the wisest, the best and the most competent. This type of government emphasises quality than quantity and places authority in the hands of those who are most suited to rule by virtue of their expert knowledge and political wisdom. It, however, remains a problem to select the best persons. Hereditary aristocracies degenerate into oligarchies or the selfish rule of the rich. On the other hand, no satisfactory method of election can ensure the success of best persons. In any case, there is a tendency on the part of irresponsible persons to use their power in their own interests without any regard for the general well-being of the community. The principle of true aristocracy is still held in high esteem. If quality and quantity are both taken into consideration, aristocracy turns into democracy.

### Meaning of Democracy.

The word 'Democracy' is derived from a combination of two Greek words - 'demos,' meaning people and 'cratia' meaning power

Democracy may, therefore, mean the 'power of the people.'

Democracy has been variously considered as a type of State, a form of government, an order of society and a way of life. Some authors distinguish between political and economic democracy, others talk of 'education for democracy.' Political thinkers, however, regard democracy as a form of government. The Greek philosophers meant by democracy, a system of government, in which the poorer classes rule to the exclusion of the rich. Utilitarians like Bentham and Mill believed in democracy as a system, which secures "the greatest good of the greatest number", which means a rule of the majority, not to the detriment of the minority. Bryce defined democracy as "a government in which the will of the majority of qualified citizens rules, taking the qualified citizens to constitute the greatest bulk of the inhabitants." Similarly, Dicey thinks that democracy is "a form of government in which the governing body is a comparatively large fraction of the entire nation." Abraham Lincoln's definition of democracy is often quoted—"a government of the people, by the people and for the people." "It is possible to fool

some people for all the time and all the people for sometime, but it is not possible to fool all the people for all time." A government is of the people, when its machinery is determined by the people themselves. A government by the people means that it is controlled, influenced and maintained by the people. And a government for the people signifies that it serves the interests of the people. The same view was expressed by the American people in their formal Declaration of Independence in 1776 that "...governments are instituted, deriving their just powers from the consent of the governed." Likewise, the French Revolutionists started with the noted words of "Liberty, equality and fraternity."

### **The Basis of Democracy.**

Democracy as a government of the people, is based on the law of nature or the natural equality of all men. All men are alike, and are to be treated as such. There should be no distinction between man and man. Bryce says "Every man who comes into the world comes into it free, with a mind to think for himself, a will to act for himself. All men are born equal, with an equal right to the pursuit of happiness. That each man may secure this right and pre-

serve his liberty as a member of a community, he must have an equal share in its government, that government being created and maintained by the consent of the community. Equality is the guarantee of independence." It follows from the theory of equality that each man is capable to understand what constitutes his best interest, and what kind of organization is required to secure his end. Success lies in cumulative effort, and a concern run by a large number of individuals ensures great achievements. The moment a government is left in the hands of one or a few, there is always a chance of their being selfish. When all citizens run a government, there are lesser opportunities for selfishness or fraud. The best government is one, which is directed towards the realisation of common good. This is possible only when every talent in the State is used in the best interests of the community.

#### **Direct and indirect Democracy.**

There are two kinds of democracy—direct and indirect or old and new. The ancient type of democracy was direct and existed in the Greek and Roman city-States. Direct democracy means a system of government, in which all the citizens directly share in the



exercise of political authority. As every Greek State was a city, naturally there was a small number of citizens. Even all the resident members of the city were not citizens, but only such people, as had the time and ability to look after the governmental machinery by themselves, were citizens. Slaves and artisans were excluded. Thus, in practice, an ancient democracy was an aristocracy. It was possible for a small community of citizens belonging to a city to gather together at one place and decide everything by means of votes. This assembly of citizens formed the legislature, the executive and the judiciary.

Direct democracy is suitable for smaller States, where the problems of government are simple, and where the citizens must have enough leisure to perform political functions. Under such a system, there cannot be any national character, for the government is in the hands of a few, who possess education, wealth and leisure. In other words, it is an aristocracy, which rules. When a large number of individuals share in the political authority, political responsibility is also divided and is a source of weakness. Government is the func-

tion of all, and nobody is responsible to the other.

Modern States, on the other hand, are nation States. Every State includes within its territory several cities and a large number of villages and towns, with a population of millions of people. No modern democratic State excludes any portion of its population from the enjoyment of citizenship rights. It does not further recognise the institution of slavery or the rule of a class. Since the size of modern States is vast and the number of actual citizens so large that direct democracy is impracticable and impossible. Nations cannot assemble at one place. The only recourse, therefore, is to indirect democracy or representative government. The government is to be carried on not by the citizens themselves but by a few, their representatives, who are elected by them. Thus, they are some, who really take direct part in the administration. The principle of direct democracy is that those, who are best qualified should govern in the name of and in the best interests of the whole nation. The government rests on the active consent of the governed.

No doubt, indirect democracy has its own abuses. In order to remove the defects of representative democracy, some features of direct democracy are introduced in some of the modern States. They are the institutions of referendum, initiative and recall. *Referendum* is the method by which a certain law passed by a representative legislature is referred for final decision to the direct vote of the citizens. It has, however, been observed that an average citizen takes little interest in elections and stays at home. The second method is *Initiative*, according to which a specified number of voters may initiate or suggest the enactment of a law. Few enthusiastic but misguided voters may secure the enactment of a definite law. The third method is *Recall*, which authorises the calling back of a representative or law or public servant by a majority of the votes. Herein, people may be guided by personal jealousies and selfish interests.

### Merits of Democracy.

No other form of government is so much acclaimed or condemned as Democracy. Those who speak in favour of democracy, defend it on various grounds.

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As a type of government, democracy is the best, wherein the rulers are responsible to the ruled. Public opinion reflects the general will of the people, which is a strong force to check the arbitrary power of the government. It elevates the mass of the people, develops their faculties and stimulates interest in public affairs. By sharing in the political authority of the State, the people are animated by a feeling of intense devotion to their State.

It is a reign of justice, liberty and equality—a reign of perfect bliss. It is an ideal form of government. Democracy secures justice to all, liberty to all and similar rights to all. No body can complain that he wanted to say something, but he could not get an opportunity of being heard. It creates a higher type of mentality.

It strengthens the love of country. Every body feels it is his government, thus, his duty to protect it. He remains loyal to his country and never does anything, which goes against the best interests of the nation.

Democracy offers an opportunity for a large-scale experience in public education. It forms the best training ground for the masses in the

art of self-government. Democracy is the concern of all : everybody directly or indirectly is connected with the machinery of the government. He, thus, acquires knowledge of popular institutions, and is trained in their working. If they commit mistakes, they suffer for them, and, consequently, avoid their repetition.

Democracy rests on the consent of the governed, and is less prone to revolutions. No body would rise against a government, which he calls his own, and in which he can directly or indirectly bring about reforms. Democracy does not mean a government in the interest of a particular class or group of people. Bryce points out, "in a State where one class is subjected to the rule of another, risings and rebellions frequently break out, threatening the stability and permanence of the government."

#### **Demerits of Democracy.**

Democracy has a number of defects. It is said that in democracy, government is responsible to all; but, in practice, it remains responsible to none. It is said that it is the work of all but actually less than ten percent of the population exercises its right of vote. Government still remains the concern of a few. It remains "an aristocracy of black-guards."

It does not ensure better government. It is a government by the poorest, the most ignorant and the most incapable, who form the majority of the population. And democracy is a government by the majority of the people. Carlyle described "the people as a certain number of millions, mostly fools."

It emphasises quantity rather than quality. How can one individual be as capable of governing as another. It counts so many heads instead of examining the capacities of individuals.

Being a government of the most incapable, democracy does not encourage higher forms of intellectual life such as literature, art and science.

Democracy is based on a false theory that every man is equal to the other. No individual is equal in capacity and intellect. How can governmental functions be assigned to one, who is incapable of it? They are few, who really know their best interests, and very few who can achieve them.

Money has perverted administration everywhere. Votes are purchased, officers are bribed and official positions are misused for selfish ends.

Political parties exercise undue influence in democracy. It is the majority, which rules. Everything is decided on party basis, and the interests of the minority are sacrificed.

With the change of parties, governments change. The majority becomes minority, and change of government means change of governmental policy. Thus, there is no stability or permanence. As H. G. Wells says democracy "can be knocked to pieces in five minutes."

The entire system of democratic government is wasteful and extravagant. Time is wasted, energy is lost in vain and money is spent aimlessly in elections and otherwise. There is a tendency to make politics a profession.

Thus, democracy, instead of benefiting all benefits a few. Parliamentary institutions are being discarded in favour of dictatorships.

### **The Future of Democracy.**

Today the world opinion is in favour of democracy, and the doubts and misgivings which appeared in the last century are gradually diminishing. The masses are well-acquainted with the working of democratic institutions and they have a liking for them. There is a

tendency to rely on the general will of the people as expressed through a direct vote. The rise of dictatorship in place of representative governments is only a passing phase: it does not constitute a revolt against democracy, but a protest against the evils of democracy. The remedy lies in more and more democracy.

Democracy rests on the fundamental principle of human worth and capability. It must, therefore, endure. To ensure the success of democracies, some essential conditions are to be fulfilled. The object is to retain democracy as an effective instrument for the promotion of public welfare. The first condition is a written constitution to guard the government against unnecessary changes, discontent of people and tyrannising over minorities.

Another condition is to develop an intelligent and virtuous citizenship. When each individual has a voice in government, he must be equipped with a number of qualities. There must be a sound educational system for the improvement of public character. Democracy is the result of popular education. Enlightened public opinion, high level of intelligence, high standard of honesty and integrity are all



possible through sound popular education.

Political democracy is based on an adequate social and economic structure. Success depends on social equality, which may at once remove social differences and bring about harmony and union among the various classes of people. Further, there should be an economic reconstruction. The government should provide such conditions in society as may facilitate the work of individuals in leading a decent life and having enough leisure to perform public duties. Unemployment and starvation should be checked, and better economic conditions in life be provided.

In the political sphere, many improvements are desirable. The rights of the minorities should be adequately safe-guarded, so that they may feel that government is not carried on in the interest of a particular class or party but for all. An average citizen is not very much interested in national affairs; he is more concerned with local problems. A vigorous system of local-self-government will stimulate popular interest and secure an active devotion to the community. Methods like referendum, initiative and recall be introduced to keep the people in touch with the activities of the

government.

### **Bureaucracy.**

Bureaucracy is a government by trained officials graded in their ranks and positions. Every government servant is responsible to his higher official, and nobody is responsible to the people. No doubt, such a system secures efficiency and skill in the conduct of government, but the officials remain out of touch with the thoughts and aspirations of the common people. Patriotism, self-reliance and loyalty cannot be fostered among the people.

### **Dictatorship.**

The term "Dictator" is Roman in origin but the Greeks developed the type of such a ruler. Dictatorship means an irresponsible government of a soldier of fortune or a pushing statesman. Dr. Gooch says, dictatorship comes into being "when the time is out of joint, when the legitimate ruler seems unequal to his task, when the affairs of the community are tangled into a knot, when the traditional foundations of the state are challenged or overthrown, when the people are hungry, or disillusioned, or panic-stricken." The Peace Treaties, which closed the Great War witnessed the miseries

of the people coupled with an unspeakable economic depression. "Under such an atmosphere of confusion and impatience it was inevitable that millions of distracted people should cry aloud for a Man; and in some cases he stood ready for the call." So dictatorships arose in Germany, Italy, Russia and Turkey.

A dictator owes his sudden rise to power partly to his own achievements and partly to the failure of democracy. "Government of the people," say Bernard Shaw, is necessary, government for the people is possible, but government by the people is a patent impossibility." Czardom toppled in Russia and Lenin, the architect of the Revolution came to power. With the Fascist triumph of 1922, Mussolini seized power and founded the Fascist State. Not long afterwards, Mustafa Kamal established his ascendancy in Turkey. The Nazi Movement placed Hitler at the helm of State-affairs. These dictators owe their success to their own courage, patriotism and personal achievements. The earlier despots depended on their personal strength and power but the dictators of today have risen to power as a result of a popular sanction, and maintain their position by remedying the discontent of the

people aroused by political and economic ill-adjustments.

Dictatorship has peculiar features of its own. Where parliament exists under a dictatorship, it remains unimportant and uninfluential. It serves the purpose to ratify legislation made by the leaders, to submit to the will of the dictator as a symbol of the national will and to humbly listen to occasional pronouncements by the party leaders. Thus, a dominant party is organised, which becomes a direct source of all laws. No sooner is the party determined about doing anything, than the opposition is lulled. The dominant party is under the direction and control of the dictator; this forms the main characteristic of a totalitarian State. Power is concentrated in the hands of one man backed by a strong and well organised party, determined to achieve its objects by crushing all opposition. It is too early to determine the future of dictatorship.

### **Unitary and Federal Constitutions.**

Considered from the point of view of the location of sovereign authority, states may be divided into Unitary and Federal. A Unitary constitution is one, in which the legislative,

executive and judicial powers of government are entrusted to one central organisation. For convenience of administration, the State may be divided into a number of local units, but these local bodies derive their power from the central government. In a federal constitution, however, there is a division of power between the federal government and the governments of the units, each being supreme within its own jurisdiction.

#### **Merits and demerits of Unitary Government.**

There is a concentration of power in a unitary form of government. There is no conflict of power or jurisdiction, as all authority emanates from the same government. It is prompt in action and quick in its decision. It entails less expenditure on the up-keep of administrative machinery. On the other hand, there are many demerits. The central government has too much legislative and administrative work to do and local problems cannot receive a sympathetic treatment at the hands of the central authority, which has no first hand knowledge of the affairs. There is no incentive for the local authorities, who entirely depend on the sweet will of the central

government. Their initiative and freedom is lost. People are naturally more attached to their locality and cherish a love for local liberty.

### **Meaning of Federation.**

When two or more States enter into a contract thereby creating a government at the centre called National or Federal and transfer to it certain of their powers to be exercised on their behalf, while retaining their internal sovereignty, they are said to have formed a Federation. Each State, which is a party to the contract is called a Unit of the Federation. Sometimes, it happens that a State is split up into two or more Units in order to form a federal union, as was the case with Canada. The individual State, thus, loses a part of its independence, but retains certain spheres of administration as stated in the Constitution. Similarly, the Central Government cannot exercise any more powers than what they are defined in the Constitution.

### **Essentials of Federation.**

The essentials of federalism are the supremacy of the Constitution, co-existence of two Governments and the special position of the

Judiciary.

### **Supremacy of the Constitution.**

By the supremacy of the constitution is meant that the Constitution is supreme over all affairs: it is the main source of authority. The Federal Government derives its existence from the Constitution, and both the governments at the Centre or in the Units exercise their legislative, executive and judicial powers in accordance with the provisions of the Constitution. The Constitution contains the terms and conditions of the pact between the federating Units and the Federal Government. It is, therefore, essential that the Constitution must be written or a written document and rigid. In order that the terms and conditions of the Union may be clearly and unambiguously understood, the Constitution must be in black and white aiming at precision and clarity. Since the federal tie is the outcome of long deliberations and excessive efforts, it should not be liable to frequent and easy changes. In other words, the Constitution may not be easily changed as if by an act of legislature, but may require some special method of amendment. It also implies that every legislature under a federal constitution is a subordinate law-making

body, and no laws may be enacted repugnant to the Constitution.

### **Co-existence of Two Governments.**

(Another special feature of a federal state is the co-existence of two Governments – the Central or Federal Government and Governments of the Units, working simultaneously or at the same time in the same land. Each Government works under its own prescribed sphere of jurisdiction according to the provisions of the Constitution. Federalism, thus, from its very nature necessitates division of power between the Federal Government and the Governments of the Units. Generally, matters of national importance like defence, coinage, currency and external affairs are committed to the care of the Central Government; while matters of local importance belong to the local states. The details of distribution may, however, differ in different federations according to their peculiar conditions and requirements. There is further a divided allegiance, and the individual in a federation is subject to two Governments, the Central and the State.

### **Special Position of Judiciary.**

The third characteristic of a federal Consti-



tution is the special position of the Judiciary, which is a natural sequence of the first two essentials—the Supremacy of the Constitution and the Co-existence of two Governments. The Federal Constitution being the supreme law of the land, embodies the definite terms of the pact, it is necessary that there should be a court of independent judges to uphold the Constitution and to keep the different governments within their proper limits. The Judiciary, thus, occupies a very important position in a federation. The Federal Judges are known as the guardians of the Constitution, and it is their duty to see that the provisions of the pact are carried into effect and not neglected. They are also empowered to decide cases of disputes that may arise from time to time between any two or more governments. If there is any ambiguity about any word, phrase or clause in the Constitution, the Court may interpret them. The Federal Court, lastly, is the supreme court of law within the land.

#### **Defects of Federalism.**

A federal form of government as compared to a unitary type of government is a weak government. The essence of federalism is the distribution of power, and a unitary govern-

ment postulates centralisation of power in a single body. A government in order to be strong must have concentration of power so that it may be prompt in action and decisive in its judgment. With the distribution of power and divided authority, it is not possible to secure these conditions. Secondly, a federal government is more or less a static government. Progressive legislation is hampered or opposed by the vested interests with definite representation in the Constitution, which is essentially intended to legalise and perpetuate the *status quo*. Thirdly, Federalism produces conservatism. The Constitution is the supreme law of the land, and is held in esteem by the citizens. It is regarded unalterable and changes and innovations are feared. The rigid nature of the federal polity prevents adjustments to the growing needs of society.

#### **Flexible and Rigid Constitution.**

Constitutions are also divided according to the method by which they may be amended or changed. A scientific classification of constitution is whether they are flexible or rigid. Flexible means movable or elastic. A flexible constitution is one, which can be changed or modified by an ordinary method of legislation.

Such constitutions have the same legal force as an ordinary law, since they can be amended by the same authority, which makes the ordinary laws. In this way, the legislative and constituent or constitution-making powers are vested in the same body. Flexible constitutions are generally unwritten. Rigid means stationary or inelastic. A rigid constitution is one, which requires for its amendment some special process. Such a constitution, in other words, cannot be altered like an ordinary law. Rigid constitutions are as a rule unwritten. In this context, constitutional law means those provisions which are incorporated in the written constitution and cannot be amended in an ordinary manner. The constitutions of the United Kingdom and Italy are flexible, but those of the United States and France rigid.

#### **Merits and Demerits of Flexible Constitutions**

A flexible constitution is known for its elasticity and adaptability. It can be altered with the same facility and ease as an ordinary law, and it can easily adapt or adjust itself to the changing conditions of time. It further reflects the natural outgrowth of national life. The constitution changes along with the change in national life. Under such a system, consti-

tational changes can easily be made, and recourse is seldom made to revolutions. In short, a flexible constitution can be adapted to changed circumstances and unforeseen conditions.

A flexible constitution has a number of demerits. It is unstable and temporary. But the stability or otherwise of the constitution depends on the national temperament of the people. Such a constitution, however, is not regarded as sacred.

### **Merits and Demerits of Rigid Constitution.**

The chief merits of a rigid constitution are that it is certain, definite and stable. It is taken down in black and white and has, therefore, a definite character. It is further stable, because it cannot be easily changed. It also safeguards individual liberty.

Its main demerit is that it is difficult to accomplish any change in it, and there is always a possibility of a revolution. It is 'too much legal.' There is a tendency to discuss the legality of the proposed changes than their practical expedience.

### **Written and unwritten Constitutions.**

Constitutions are by tradition classified as

written or unwritten. A written constitution is one in which the fundamental principles determining the form of government are embodied in a single document or piece of legislation. It is not necessary, however, that a written constitution may form a single document but may consist of a series of instruments. An unwritten constitution, on the other hand, is one, which rests on usages, customs, judicial decisions and stray acts of legislation. The American Constitution is an example of a written constitution, and Great Britain and Hungary represent unwritten constitutions.

#### **Distinction Unscientific.**

The classification of constitutions into written and unwritten is not a scientific one. As a matter of fact, no constitution is wholly written or unwritten. A written constitution carries with it a number of unwritten practices, and an unwritten constitution includes a written portion. It is wrong to think<sup>2</sup> that the constitution of the United States is all written, or the constitution of England is wholly unwritten. The distinction is one of degree rather than of kind. It is often repeated that a written constitution safeguards individual liberty by acting as a check on the

arbitrary authority of government. This is not true. Take the constitution of England; it is unwritten, but still there is personal liberty. A unitary constitution is generally unwritten and flexible and a federal constitution is necessarily written and rigid.

### **Good Constitution and Good Government.**

A good constitution is always clear and definite. Any ambiguity or vagueness may lead to disputes and controversies regarding its meaning and implication. It must further embody a declaration of civic rights, and, thus, safeguard individual liberty. Judicial authority is necessarily marked apart from the executive. The method of amendment should not be very difficult nor too easy. It should only deal with the fundamental principles of State-organisation and not with the details of administration, which grow and develop in course of time.

The question arises, what constitutes a good government? Yet, there is no definite standard according to which the merits or demerits of a particular political system may be judged. The success or failure of a system of government depends on the conditions and circumstances

of the society, in which it prevails. Some hold that efficiency of administration is a criterion of good government. Others believe that the best government is one, which secures the material and moral well-being of the citizens. In fact, it is not the form of government that matters, but the way in which it is worked out. It is the spirit and not the structure that counts, for as the poet Pope says:—

“For forms of government, let fools contest,  
That which is administered best is best.”

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## **CHAPTER VII.**

### **THE STRUCTURE OF GOVERNMENT.**

#### **Organs of Government.**

Government as previously defined is the administrative machinery, through which the will of the State is formulated and executed. There cannot be any State without a government. *Government is the manifestation of the State,* and the governmental machinery fulfills the purposes of the State. Government, thus, has three chief organs – the Legislature, which makes law; the Executive, which executes or puts into effect the provisions of the law made by the Legislature and the Judiciary, which applies that law to particular cases. The rights of the citizens are preserved only when these governmental organs work efficiently and satisfactorily. If the Legislature does not consist of prudent and well informed persons, no good law can be enacted. If the Executive does not enforce the law properly, there is no order in the country. And if the Judiciary is partial in the application of law, there is tyranny and lawlessness.

#### **The Theory of the Separation of Powers.**

The question arises: should these three



organs or powers of government be in the hands of one person or a body of persons or should each of them be in distinct and separate hands, none controlling the other ?

There are two main theories regarding the separation of power. The first is the "Trinity theory" and the second is the "Duality theory." Just as the Christians believe in the Trinity - Father, Son and the Holy Ghost, similarly political thinkers believe in the trinity of legislature, executive and judiciary. According to the other theory, there are only two powers within a State, the first is legislature and the second is executive, and there is no third power. There can only be two bodies; one, which may make laws, the other which may execute them. The judiciary, therefore, is only a part and parcel of the executive. If we accept this view, there remain only two departments of the State, and the judiciary forms part of the executive. But the theory is criticised on the following grounds. The judiciary by simply helping and acting in co-operation with the executive cannot form part of the executive. When the judiciary interprets and applies the law of the land, it only performs the judicial functions and not the executive. The Trinity

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theory is, therefore, not acceptable.

### **Meaning of the Theory.**

The separation of power means the separation of the legislative, executive and judicial powers of the State. The three departments of the State should not only be separated from one another but they must individually and separately work within their prescribed spheres of jurisdiction, none controlling the other and none controlled by the other. This is absolutely necessary to safe-guard the liberty of the individual. Where there is a concentration of power in one person or a body of persons, the liberty of the individual is lost.

### **History of the Theory.**

The Greek political thinkers, specially Aristotle, believed in the three-fold division of power—deliberative, magisterial and judicial. In the middle ages, there was no distinction made between the legislative and executive functions of the State. Sir Henry Maine was astonished to find that the theory was propounded not earlier than the fourth century. Both Bodin and Locke were against the concentration of power in a single body or a single person.

Montesquieu, the French political thinker, propounded this theory of the separation of power for the first time and in the best manner possible. According to him the executive, legislative and judicial powers of the State should belong to distinct and separate departments and to distinct and separate persons. No department should control the other and none should be controlled by the other. "If the legislative and executive powers," says he, "are united in the same person or body of persons, there is no liberty, because of the danger that the same monarch or the same senate may make tyrannical laws and execute them tyrannically. Nor again there is any liberty if the judiciary is not separated from the legislature and the executive. If the judiciary were joined with the executive, the judge would then be the legislator. If the judiciary were joined with the legislature, the judge would have then the force of an oppressor." The theory was advanced to support the rights and liberty of the individual, and forms the basis of the French Revolution.

Blackstone, a prominent English jurist, expressed the same ideas by saying that if the judiciary were joined with the legislature, the

life and liberty of the subjects would be exposed to arbitrary control; for "in all tyrannical governments the legislative and executive functions are vested in the same person or body of persons and when these two powers are united together, there is no public liberty."

### The Practice in Modern States.

The theory of the separation of power was held in high esteem during the eighteenth century, but soon after it began to decline. So far as practice goes, many defects are revealed in its application. No modern government can boast of a real separation of power. If we take into consideration the leading constitutions of England, France and the United States, we come to the conclusion that nowhere the three departments of the State are altogether separated and independent.

In England, the legislature consists of two Houses—House of Commons and House of Lords. The Cabinet is the real executive. It consists of a Prime Minister and a number of ministers; all of whom are members of the British Parliament. The Cabinet is not only responsible to the legislature but forms a part of it. A section of the House of Lords constitu-

tes the Judicial Committee of the Privy Council. The Upper House, consequently, is not only a law-making body but also exercises judicial powers. The head of the judiciary is a member of the British Cabinet. Thus, the legislature, the executive and the Judiciary are joined to one another. In practice, there is no separation of power in England.

In France, the executive is elected by a joint sitting of the two Houses of Legislature. The President has no power of vetoing any bill passed by the Legislature, yet he may refer it back for reconsideration. Thus, the legislature and the executive are joined together in France.

In the United States of America, there is a separation of power to a certain extent. The executive is separated from the legislature in the sense that the President, the executive head, is elected separately by the presidential electors. The Senate (Upper House) still controls the President in certain matters, and measures taken by the President are to be ratified by the Upper House. The Judiciary, of course, is quite independent. It may interpret the law of the land, apply that law and may declare any law passed by the legislature.

as null and void. Thus, in America too, there is no real type of separation of power.

### Criticism of the Theory.

The theory of separation of power in a modified and limited sense is being applied to many modern States, but nowhere there is a complete separation of power. The theory is criticised on many grounds. A complete separation of power is impossible. The constitutions of the United States, England and France are a guide in this respect. The theory is not only impracticable but undesirable. The unity of the State can only be maintained by a harmonious working of all the departments of the State, which will not be possible if the three departments are separated altogether. The theory is said to be harmful. The case of the United States is cited in this connection. The judiciary in America is also elected by the people, which means weakness to the judiciary and the right of the people to an equality before law is also frustrated. It is wrong to think that the separation of power can alone secure the individual rights and liberty. In the United Kingdom, there is no separation of power, yet there is individual liberty. The liberty of the people rests on

other considerations than those of the separation of power. It is a mistake to think that all the three departments of the State are equal in status. The most powerful department of the State is the legislature, next comes the executive and the judiciary is the weakest of all. Further, the unity of the State does not permit separation of power.

### Evaluation of the Theory.

The theory, inspite of all its defects, has a value of its own. If applied in a limited sense, the three departments of the State may work harmoniously and in co-operation with one another. Where the theory is embodied in the constitution of the State, there is a "government of the separation of power." Where there is no such provision, there is a "union of powers."

### The Legislature.

Every State requires law or rules, which may guide the conduct of its citizens and officials. A good government is based on good laws. The question arises: who should be the legislators and how should they be appointed? Should the legislature form a single house or two houses. When the legislature consists of

one house or a single body of legislature, it is called unicameral. When the legislature is composed of two houses, it is called bicameral. The lower house is also called the first house, and the upper house is known as the second house.

### Function and Powers.

In many States, the legislature enjoys constituent power, and can modify or amend the constitution. In England, specially, the authority of the British Parliament is supreme. Apart from law-making powers, the legislature exercises control over the finances of the State. It sanctions the raising of money and its expenditure. Under a responsible government, the legislature controls the composition and functions of the executive. In many States, the legislature also performs certain judicial functions. A section of the House of Lords in England forms the Judicial Committee of the Privy Council. Lastly, the legislature voices the feelings of the people and expresses public opinion.

In theory, both the houses have equal and co-ordinate power. In Switzerland, both the houses are equal in power. But in most States, the lower



house is more important in financial matters; and money bills can only originate in the lower house. Some upper chambers, like the British House of Lords, have no power to originate, amend or reject a money bill. Elsewhere in France, the United States and the Netherlands, the upper house can reject a money bill initiated by the lower house. With the rise of responsible government, the lower house has become more important and the powers of the upper house are curtailed. In England, France, Italy and Spain, the upper house yields to the lower house. In England, a bill passed thrice by the Commons within two years becomes law, despite the veto of the House of Lords.

#### **Duration and Procedure.**

The maximum period for which the legislature lasts is called the duration. If elections are held too frequently, they are sure to disturb the efficient working of the legislature. On the other hand, if it is allowed to continue indefinitely, it will after some time cease to represent the views of the people. In most States, the two chambers are elected at different time and for different periods. Generally, the lower chamber lasts for five years, and the upper house usually for nine years.

Each house determines its own rules of procedure to be followed in the consideration of bills. Each bill is duly notified to the public and passes through various stages or readings until it becomes law. Generally, a select committee is formed to consider the details of the bill and its findings are placed before the legislature.

### Unicameral System.

Formerly, the unicameral system of legislature prevailed, but the modern tendency is in favour of bicameral system. States like Spain, Portugal, Naples, Mexico and Bolivia have all adopted the bicameral system. In some of the Baltic States, Turkey, some of the Canadian Provinces, some Swiss Cantons and some Indian Provinces, a unicameral system of legislature is still in vogue.

A unicameral system of legislature secures 'unity' instead of 'duality' in the organisation of the law-making powers of the government. A single house may be marked by unity of purpose. It may be quick in action and prompt in its decisions. Where there are two chambers, there is inevitably discord, division and inactivity. Abbe Sieyès, "the French poli-

tician remarked, "if a second chamber is in agreement with the first, it is superfluous, and if it is not in agreement with it, it is pernicious."

### **Bicameral System.**

The bicameral system of legislature is more useful on account of a number of reasons. The second chamber serves as a check on hasty, rash and ill-considered legislation of the first house. A single house always proves rash and irresponsible; it is swayed by the momentary emotions and passions. A single chamber has an innate tendency to become oppressive, tyrannical and corrupt. A second chamber is necessary to afford protection against the tyranny of a single house. Every State has its aristocratic and democratic elements, and the second chamber is designed to provide representation to different interests and classes of people. A single chamber always subjects the executive to its control, but two chambers, while controlling each other, offer greater freedom to the executive. The bicameral system, further, affords a means of giving representation to the political units composing a federation. The upper chamber in a federation is composed of the representatives of the various units.

Since the bicameral legislature is a representative body of all the sections of the people, it correctly represents the general will.

### Composition of Legislative Houses.

The two chambers of the Legislature are to be composed on different principles, otherwise one would be a mere duplication of the other. The lower house is generally large and the upper house comparatively small, for the former represents larger constituencies and the latter requires higher membership qualifications. The lower house represents the opinion and interests of the mass of the public, but the upper house represents special classes or interests of the people.

Several methods are employed to compose the upper house. In England and Italy, the principle of hereditary succession is followed, which offers an opportunity for educated and leisured people to acquire political knowledge and gain political experience. In Italy,\* there is a principle of appointment and in Canada that of nomination. In the United States, France and Belgium, there is either direct or indirect election. In Japan, Spain and South Africa, a mixed principle is adopted, which is

based on a combination of the above mentioned three principles.

### The Principle of Representation.

Since modern States are vast in their size, immense in their population and complex in their problems, a direct representation of the citizens in the government of their country is impracticable and undesirable. The only recourse is to a representative government. The public may choose their representatives from time to time and entrust to them the discharge of governmental functions. Modern democracy is, thus, organised on a representative basis.

Technically, the right to vote is called franchise or suffrage. Manhood suffrage means that all the adult male members of the State have a right of vote. Adult or Universal Suffrage connotes that both adult male and female members enjoy the right of vote. The act of making a choice between candidates is termed as Voting. Voting may be open or secret. In the first case, the public knows for whom a person voted. In the second case, there is voting by Ballot, and every voter is given a paper to mark his choice. In this way,

nobody knows for whom a particular individual voted. Polling Booths or Stations are such places, as are fixed to cast vote. Those who count the votes are called Returning Officers. The process of choosing representatives is called Election. The body of voters forms the electorate and an area or group of people, which is given the right of representation is called Constituency. The actual process of election is determined by rules defined in the constitution. Firstly, an electoral roll is prepared containing the names of voters in a constituency. Candidates file their nomination papers duly proposed and seconded within the prescribed time. The names of the candidates are then declared for public information. A date is fixed for election, and Returning Officers are appointed to record the votes. Each voter is supplied with a ballot paper, on which he puts a cross against the name of his candidate. When the election is over, the ballot boxes are opened and the votes counted. The result is, then, announced.

#### Franchise—Adult, Weighted and Female.

According to the theory of democracy, the right of vote should vest in every adult,

whether male or female, so that nobody should be debarred from enjoying political privileges. Citizenship is meaningless without functions. The right to vote is a cherished privilege of citizens and entails a sacred duty. Certain types of individuals such as lunatics, convicts and aliens are, of course, to be excluded. At present, in India, it is not possible to enforce the principle of adult franchise. Our country is very vast in size; and means of communication are not adequate for the purpose. The masses are illiterate and ignorant. The process, further, entails a heavy expenditure, which India is not in a position to incur.

Voting is not only a right but a function, and as such can only be performed by those who have ability to discharge this function properly. Wisdom and folly cannot be put on the same level. Experience has, however, proved that those who do not 'possess' franchise, are excluded from an active share in the political authority of the State. Since there is no test of 'ability', franchise has, perforce, to be limited and determined on various considerations—education, property and the payment of taxes. Every State prescribes certain minimum standard of education, property qualifica-

tions and taxable capacity. Those, who hold property and pay taxes should be given a right of vote in preference to those who do not pay any taxes.

In some countries, plural or weighted voting is in vogue. Accordingly, a voter by virtue of his wealth, education, profession or calling may be given more than one vote. This system is opposed to democratic principles, which hold that "every man's vote is to count as one and no man's vote as more than one." In England and India, plural voting exists to a limited extent.

Men have been enjoying their right of vote since long, but women's franchise is of recent growth. In several states like France and Italy, votes are still denied to women. It was with difficulty that women secured this right in England, but in India the matter was easier. Indian women are not only enfranchised, but they have special representation in the legislature.

Several arguments have been put forward against female franchise. It is said that women are physically inferior to men and cannot perform civic duties efficiently. If they parti-



cipate in politics, they would neglect household affairs, which is their main concern. If they vote according to the wishes of their husbands, this would mean duplicating the votes of male members, but in case they go against the view of their husbands, family relations are bound to suffer. As a matter of fact, these arguments do not carry much weight. There is no reason, why women should not possess civic rights and should not perform civic duties.

#### **The Problem of Minority Representation.**

The population of every State consists of majorities and minorities. A minority is a group of people, who forms a comparatively small population. If they are organised on a political basis, they are called a political minority and if religion or sect serves the bond of unity, they are known as a religious minority.

It is admitted on all hands that minorities, whether religious or political should have a due representation in the legislature. John Stuart Mill, while dealing with minority representation said, "No real democracy, nothing but a false shew of democracy is possible without it (minority representation)."

#### **Methods of Minority Representation.**

The most popular method employed for the

representation of minorities is Proportional Representation. The object of this method is to secure to every important party a representation in the legislature in proportion to its voting strength. The scheme as is popularly adopted goes by the name of the Single Transferable Vote. Each constituency returns three or more members to the legislature. Each candidate, in order to be duly elected, must receive the *quota*, the minimum required number of votes, which may entitle a candidate to become a member. The *quota* is obtained by dividing the total number of votes cast by the number of seats allotted to the constituency. Supposing there are hundred votes cast, and there are five seats reserved, then the *quota* would be hundred divided by five, which is equal to twenty. Each voter has a single vote but it is transferable. The voter has to mark on the voting paper his order of preference. If a candidate gets more than the *quota*, his surplus votes are transferred to the other candidate and so on.

In a single-member constituency, when there are more than two candidates and none secures a clear majority of votes, a second ballot is taken, excluding the candidate getting the

least number of votes. This is called the *Single-Ballot*.

The system of *Limited Vote* requires multi-membered constituencies. Every voter has more than one vote, but less than the number of seats to be filled. Thus, if there are four seats to be filled, a voter cannot have more than two or three votes. In this way, if the minority is organised, and the majority disorganised, the minority can easily capture some seats.

The system of *Cumulative Voting* requires that every voter must have as many votes as there are seats to be filled, but he has the choice of either casting all his votes for the same candidate or distribute among a number of candidates. In this way, if the minority is organised, and all its members vote for the same person or persons, that minority may be able to capture a few seats.

The *system of separate representation or election* means that the voters belonging to a definite party or community are only allowed to vote in a separate constituency and for the candidates of their respective community, and whoever secures a majority of votes, he is elected.

In this way seats are reserved for minority communities.

### **Direct or Indirect of Elections.**

Representatives are to be elected either directly by the people or indirectly through a smaller body of electors. In the former case, the voters themselves elect the representatives; in the latter case, they choose a smaller body of electors, who make the final choice. In the United States, the President is elected indirectly by the Presidential electors, who are chosen by a direct vote of the people. In the proposed Indian Federation, the Federal Assembly shall be composed of representatives chosen by the Provincial legislatures.

### **Party System.**

Parties form a connecting link between the representatives and their voters. Election does not only mean a choice of a representative, but a verdict on the policy and programme of the party, to which the candidate belongs. "Party system is the natural outcome of the spread of democratic governments. Popular governments are marked by a majority rule. Majority is formed by the organization of parties holding similar views on political issues. Political parties

are, therefore, the distinguishing characteristic of democracies, and democratic governments are only possible through party organization. The average voter neither has the ability to choose nor the knowledge to judge the candidates, and is obviously helped by the organization of political parties, which guide the voters in the choice of candidates.

A political party may be defined as an organised group of citizens, who hold similar views on public questions and agree to follow a definite policy and programme. All men do not think alike, nor do all think differently. There are some, who think alike, and they form a party of their own. There is strength in union, and parties are formed to take proper steps with a view to the realisation of common purposes.

### **Functions of Parties.**

Political parties play a very important part in the formulation of public opinion, in the selection of representatives and in the conduct of democratic governments. It has made democracy possible in big countries like the United States and Great Britain. It frames political issues and enables the general people to concen-

trate their attention on problems of public importance: Parties are effective instruments of political education and propaganda. Each party has its own programme of action, to which each member of the party conforms. This stimulates active interest in public affairs. It is through the working of parties that decisions are quickly arrived at on complicated political issues. Party system offers an opportunity for poor but capable individuals to take a proper share in the politics of the country. Under a parliamentary system, parties play an indispensable part in the formation of government. It imparts stability to the executive, and harmonises the activities of the various organs of government. It prevents hasty legislation and is a permanent guide to legislators.

#### **Demerits. ,**

Party-system, inspite of its many advantages, has many set-backs. It suppresses individual opinion and action, and man's independence and individuality do not fit in with the rigid discipline of modern parties. If an individual is not prepared to subordinate his intellectual freedom and integrity to the interests and policy of the party, he is debarred from taking proper share in the political activities of the

country. Generally, it happens that able and competent persons are kept out of office, if they belong to opposite parties. There is a constant fight for supremacy between those who are in power and those who want to recapture that power. Thus, the real interests of the country suffer; party organizations divide the country into hostile camps, and each party tries to achieve its selfish ends, often at the expense of public good. False propaganda is carried on, facts are distorted and mean tactics are adopted. Party organization leads to nepotism and incompetent persons are preferred on account of party interests. Multiplicity of parties weakens the executive and hinders the progress of the government. It debases the moral standard.

### Public Opinion.

The best government is one which does not fear public opinion. A well-regulated and free public opinion is the watch-dog of every administration; the people have the liberty of criticising the government, when criticism is necessary and supporting the government, when their support is its legitimate right. Public opinion is the only means by which the government may be kept within its proper bounds. An ill-informed democracy is the

worst type of government.

Public opinion is formed through a number of agencies—the press, the platform, educational and religious institutions. Freedom of the press is one of the fundamental rights of the people, and it is generally included in the constitution of every advanced State. It is through the press that the government knows the feelings and the attitude of the people that they take towards the measures of the government. The press also enables the average citizen to have an intelligent appreciation or otherwise of the activities of the government. It is through the daily press, it is said, that democracy was made possible. It is, however, the duty of those who are in charge of the press to be impartial and unprejudiced in their views and criticism.

Freedom of speech is another fundamental right of the people and is also included in the constitution of every advanced State.\* It is usually necessary that the people may be addressed on certain burning topics of the day so that they may form their own views. If this right of the individual is not granted, there is a general discontent among the people.



Educational institutions play an important part in the formation of public opinion. It is rightly said that the children of today are the citizens of tomorrow. It is, therefore, the duty of every institution to impart such education as may enable the students to become patriotic and broadminded citizens. In every institution, there are some debating clubs and unions through which students are trained in the art of speaking and parliamentary methods of government.

In ancient time, religion was the very breath of every individual's life. Religion controlled the activities of the individual, group and the State. In medieval time, the Christian church established a number of influential political institutions. In modern days, religion is separated from politics, still it exercises supreme influence and guides our actions to a considerable extent. Every government has to feel the pulse of religious associations and groups when enacting laws and adopting new measures.

### **The Executive.**

The executive forms the second important organ of government and consists of a body

of officers, who are entrusted with the charge of enforcing the laws of the land as enacted by the Legislature. Broadly speaking, the Executive includes the entire staff of officials, who conduct the routine administration and keep up law and order in the land.

### **Functions:**

The Executive possesses a distinct set of functions. It enjoys diplomatic power: it determines and conducts foreign relations, declares war, enters into treaties and negotiates with other governments.

The Executive has military power. It protects the State from foreign invasion, suppresses internal disorder and maintains peace and security in the country.

The Executive power is concerned with the enforcement of the law and the conduct of administration. The Executive puts into effect the provisions of the law of the land and carries on the administrative work of the State.

The Executive partially performs judicial functions in as much as it grants pardons to those convicted of crimes, exercising its prerogative of mercy.

The Executive head of the state has also legislative power. The head of the Executive enjoys powers of veto over bills passed by the legislature. He summons, prorogues and dissolves the legislature, issues ordinances and promulgates emergency laws.

#### Kinds of the Executive.

The form, composition and functions of the Executive differ from government to government. Democratic Executive may be classified into three main classes—Presidential, Parliamentary and Collegiate. In an undemocratic State, the executive authority is vested in a single person – a monarch or a dictator. Where there is an absolute monarchy, there is hereditary succession to the office.

Presidential type of executive exists in the United States of America. The President of the Republic is elected by presidential electors, who are, in their turn, elected by the citizens. The President of America holds office for four years, and may be re-elected for a second time. He makes appointments to all important posts and is himself responsible for the entire administration. He enjoys legislative power and can veto any bill passed by the legislature. He di-

rectly deals with foreign governments and is not responsible to the Congress.

The Parliamentary form of Executive operates in several countries, notably England, France and Canada. Accordingly, the real executive authority is vested in a cabinet consisting of a prime-minister and a number of ministers. The cabinet holds office so long as it commands the respect of the legislature and resigns as soon as it loses its confidence. The legislature may pass a vote of censure against the policy of the cabinet, and, thus, compel it to resign. In such a cabinet, there is a joint or collective responsibility. The work of one minister is the work of the whole-ministry, and if a vote of censure is passed against any one of the ministers, the whole ministry resigns. In case of conflict between the cabinet and the legislature, the cabinet either resigns or dissolves the legislature and holds a fresh election. As a result of the election, if there is a majority against the cabinet, it has to resign forthwith. In England, the King is the nominal executive; the cabinet is the real executive.

The Collegiate Executive exists in Switzerland. It consists of seven members, who are elected for a fixed term by the legisla-

ture, but are eligible for re-election. It is not required from them that they must belong to some particular political party or agree on some definite policy. But they continue as a single body carrying out the wishes of the legislature, under whose pay they remain. They exercise considerable influence due to their practical experience. Their views may not be acceptable to the legislature, but they continue in office, because they do as they are commanded by the legislature.

#### **The Judiciary—its Functions.**

The third organ of every government is the judiciary, which consists of those officials, who apply the law of the land to specified cases that are brought before it for decision. Such cases may be disputes between the citizens themselves or between the citizens and the State. Each State appoints graded judicial officers, beginning with the lowest courts to a succession of higher courts until at the top there is a *Supreme Court* or a *High Court*. As is obvious, the judiciary occupies a very important position in the system of government. Sometimes, it is necessary for the judges to exercise their discretion or apply the general principles of equity, when law is silent on the

point. These judicial pronouncements form precedents and have a binding force specially on the lower courts.

### Qualifications.

An efficient judiciary must be free from the control and influence of the legislature or the executive. Appointments are to be made on merits, and the judges must have a sound knowledge of law and be trained lawyers. They should further be independent of the control of the executive in so far as their tenure of service is concerned. They are the guardians of the constitution and protectors of individual's rights and liberty. They should, therefore, be impartial and administer absolute justice. They are not to be swayed by the momentary passions, but be cool and dispassionate in their judgments.

### Appointment of Judges.

There are three methods followed for the appointment of judges. The first is popular election, as prevails in some States of the American Federation. The second is election by the legislature, as in Switzerland, and the third is appointment by the executive, as in

England, India and in some other countries. The first method makes the judiciary weak and lacking in independence. It is, further, the most undesirable form of recruitment, since people are not usually the best judges of the legal knowledge of candidates. The second method is also open to objections. Firstly, it is against the theory of separation of power. Secondly, on account of party organization, an election by the legislature amounts to nomination by the majority party. A judge so appointed can never be impartial or independent. The third method, though not an ideal one, is, however, satisfactory to a great extent. When once a judge is appointed, he must be free from executive interference. His salary should not be varied to his disadvantage. His tenure of office should be fixed, and he should automatically retire on attaining a prescribed age. The process of his removal should not be easy. In modern States, elaborate checks have been placed on the executive in matters of dismissing the judges. In England and other continental countries, a judge may only be removed by a joint address from both houses of legislature to the chief executive.

### Local Government.

If a government is unitary, it has only one central government. If it is a federal one, it has a federal government and several governments in the units. But in both governments, there is a local government or local self-government. No central government can carry on its functions satisfactorily unless it allows freedom and power to local bodies. For administrative purposes, it must be organised in a number of smaller units or divisions. The local problems can be easily dealt with by local officers acquainted with local problems and needs. These local bodies are called local governments, and if these local bodies or officers are responsible to the people of the locality, they are known as the "Local Self Government." Every modern State maintains and finances its local administration with a view to make the life of its members happier, healthier and longer. India is no exception to this rule, and the organization of the local self-government is described in great details in books on Indian administration.

### International Organization.

Modern States are nation-States. A nation is a people organised within a territory. Each



nation ' tries to elevate itself in the community of nations, and glorifies itself at the expense of other nations. This is intense nationalism, and ignores world - outlook and international peace. But all States are neither good nor bad; there are some, which give a due consideration to the interests of other nations. They think of the welfare of humanity. Thus, intense feeling of nationalism is today softened by thoughts of universal brotherhood and internationalism. No State can live as a separate entity, it must come in close contact with other States. Each State has its natural resources, which cannot be utilised by its own citizens. There is always surplus, and every State wants to export it. Thus, there arises the necessity of exchange of commodities. If an adjustment is not possible, there is always war between two or more nations. In order to avoid war and to secure world - peace, President Wilson of the American Republic initiated the idea of inaugurating the League of Nations just after the World War.

The League of Nations has been established for two purposes; firstly, to secure a peaceful relation between the various nations of the world and to check future wars. The League

Covenant signifies:—

"In order to promote international co-operation and to achieve international peace and security,

"by the acceptance of obligations not to resort to war,

"by the prescription of open, just and honourable relations between nations,

"by the firm establishment of the understandings of international law as the rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another."

The general principle of membership is that a "State once admitted to membership in the League is on a footing of equality with all the members in respect of its rights and obligations." The office of the League is at Geneva, in Switzerland.

There are four organs of the League—the Assembly, the Council, the Permanent Court of International Justice and the Secretariate-General. The Assembly is composed of about 150 official representatives of the various members, each member having three representatives

at the most and one vote-in-all. The Council forms the inner body of the Assembly and consists of five permanent members representing Great Britain, France, Italy, Japan and Germany, and nine non-permanent members representing nine small States elected by the Assembly. The Council meets at least once a year, but the Assembly ultimately decides all issues. The Permanent Court of international Justice is a bench of eleven judges, whose function is to opine on disputed questions of international relations. The League Secretariate has a Secretary General and a staff to keep all records and to carry on official correspondence.

The League has undertaken a number of humanitarian works such as to improve the condition of labour, to promote public health to suppress immorality and the use of noxious drugs and to improve world trade and commerce. The organization of the World Economic Conference and the International Labour Office are its other achievements.

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## CHAPTER VIII.

### THE END AND FUNCTIONS OF THE STATE

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#### The Problem of the State.

What is the purpose or end of the State ? What is it that the State exists for ? Can we go away with the State ? If we cannot do away with the State, what functions should it perform in order to justify its existence ? What principles should guide its activity ? Is the State an end in itself or a means to an end ? Such questions have always perplexed the minds of political thinkers. Many theories have, therefore, been put forward to define State-activity.

#### End or Means ?

The ancient State was regarded as an end in itself, and the individual was sacrificed on the pretext of general welfare. In the modern sense of the term, the State is a mere institution, an artificial agency, through which the common ends of society are realised. The State, today, exists for the individual and not the individual for the State. Both the conceptions are one-sided. From the point of view of the individual, the State is a means through

which his self-développement is possible. From the point of view of the State, the individual exists to promote the highest développement of mankind. The common-sense view is that the State is both an end and a means. The Greeks regarded State as the highest aim of human life and an end in itself. The same view is taken by Hegel, a modern exponent, who conceived the end of the State as the realisation of the moral law. The Individualists, in general, regard the State as the only means for the promotion of the welfare of the greatest number of individuals. In fact, the end of the State and the end of the individual coincide.

Different political writers regard the end of the State either *order* or *progress*, or *happiness*, or *utility* or *justice*. These are, however, narrow views. Bluntschli defines the end of the State as "the development of the national capacities, the perfecting of the national life, and finally its completion." Burgess classifies the end of the State as primary, secondary and ultimate. The primary end is organization of government and maintenance of liberty; the secondary end being the perfecting of the national life and genius, and the ultimate end is the perfection of humanity. Professor

Garner calls them original, secondary and ultimate. But there seems a confusion between the end and the means; organization of government can more appropriately be called a means rather than an end.

### Functions of the State.

Anything that exists has some purpose behind it. The State, as the highest organization of mankind, also serves some purpose. It justifies its existence and seeks the fulfilment of its end by performing certain functions. To attain the primary and secondary ends of internal organization and national welfare, the State has to perform a number of functions. As a matter of fact, all writers agree that there are some functions that the State should perform in order to justify its existence. There are, in the first place, essential or obligatory or natural or constituent functions, which are common to all States. Then there are non-essential or ministrant functions which are neither definite nor exhaustive; they vary from State to State.

### Essential or Natural Functions.

Essential or Natural functions are such as are performed by all States. They are essen-

tial, for no State can justify its existence without performing these functions. They include, in short, the maintenance of external and internal order including the protection of life, liberty and property of the individual. In other words, these functions determine relations between the State and other States, between the State and its citizens, and between citizen and citizen.

The first essential function is to maintain internal peace and security. The State must, first of all protect its citizens against one another and maintain law and order within its own borders. It is a sacred duty of the State to protect the life, liberty and property of each citizen against any unjust encroachment on the part of other citizens or its own officials. Without a good system of law, there cannot be any personal liberty or peace and order. The State must also fix the legal relation between husband and wife and between parents and children, and define contract rights between its citizens. It involves the maintenance of police, law-courts and jails for the detention and punishment of offenders. Punishment is an essential instrument of maintaining the social order. It is not only retributive but also pre-

ventive in character; it deters people from pursuing criminal deeds. The purpose of punishment is to reform the criminal himself by making him realise the folly of his evil ways.

No State can live isolated from other States. Every State is in close contact with other neighbouring and far-off States. One State's dealing with other States is termed as foreign relations. It is the duty of every State to promote mutual cooperation and good will among all other States, and avoid conflicts. But sometime war is unavoidable; therefore, it is the duty of every State to maintain a sufficient coercive force to ward off foreign attacks.

All States allow civil and political rights to their citizens. Each State defines these rights, and in many States, some of these rights are embodied in the constitution itself.

#### **Ministrant or Non-Essential Functions.**

Besides, the State performs some other functions which, though not essential for its very existence, are of considerable importance, because they directly promote the general well-being of the individual citizen. These func-



tions are optional, as they are not binding on the State. But, that State is alone advanced, which directs its activities to secure the general welfare of individuals.

Education is one of the most important ministrant functions. It is the duty of every State to provide for the education of its citizens. Right to education is a fundamental right. Education is the basis of Civic life, and no progress whether material or moral is possible without a good system of education. In most countries, primary education is free and compulsory, but secondary and higher education is also within the reach of those, who are in a position to be benefited by it.

The State must further make provision for sanitation and health. The State must make adequate arrangements for the relief of human suffering, the improvement of public health and the maintenance of proper sanitary conditions. It is the health of the people, which is of vital concern to every State. In pursuance of this ideal, the State maintains public hospitals, dispensaries and sanitarium. There are play grounds, public parks and gymnasias.

It is the duty of the State to provide for

easy means of communication and transport in order to connect the different parts of the country for administrative purposes. Railway roads, bridges, canals, post offices, telegraphs, telegrams and broadcasting stations are built and maintained.

The State is mainly concerned with the development of industrial and economic activities of its people, for without them no material progress is possible. Every State controls its currency and exchange. Some States have enacted laws regarding labour in factories, mines and workshops and they also regulate the relations between the capitalists and labourers.

It is also the duty of every civilised State to make provisions for the poor and the incapable. Every citizen is entitled to enjoy an economic minimum. The State must take steps to prevent unemployment and provide work for every willing worker. Asylums, work-houses, and schools for the blind and deaf or dumb are to be established.

### The State-Activity.

Having determined the end and purpose of the State in general, it is to be considered as to

what principles should guide its activity. In short, what are the principles and nature of State-activity? There are a number of theories—Anarchism, Individualism, Socialism, Communism and Idealism.

### Anarchism.

The popular conception of an Anarchist is that he throws bombs and commits outrages. The Nationalists also threw bombs during the World-War. Anarchists like Socialists usually believe in class-war, and may, thus, use bombs. Governments can make more bombs than Anarchists. Therefore, the element of violence is neither essential nor peculiar to those, who adopt the Anarchist's position.

### The Anarchist and State-Control.

The Anarchist is not opposed to the State as such, but against the force that is exercised by it. Anarchism is opposed to every kind of forcible government: the only government that it can tolerate is a free government. It must be based on the general consent of the people and not of the majority. Anarchists object to institutions like police and criminal law, imposing the will of one section of the community over the other. Liberty is, there-

fore, the supreme goal of the Anarchist. The Anarchist is opposed to the authority of the State. If the State is to persist, it should become a voluntary association.

### Moral Anarchism.

Moral Anarchism believes in the communal ownership of land and capital. In this respect, it is akin to Socialism and is, therefore, properly called Anarchist Communism. Private property is a source of tyranny by certain individuals over others. Bakunin is the founder of this school: a systematic study of the doctrine was, however, made by his follower, Prince Kropotkin. The position of Bakunin is unique among the political thinkers. Every kind of rebellion against authority always aroused his sympathy.

### Philosophical Anarchism.

Kropotkin devoted much of his writings to technical questions of production. He says that if production was better organised and scientific, there would be a few hours' agreeable work for all. He desires to abolish the whole system of wages. There should be no compulsion in work. Everything is to be shared equally among the members of the community.

Work is alone pleasant, and every body would prefer work to idleness. There would be no government and no law to exercise force. The Anarchist stands for the freedom of the individual against both the authority of the State and the ascendancy of the group. In the Anarchistic society, taxes will take the form of voluntary contribution, and legislation will take the form of suggestions and advice. If Anarchism believes in any government, it is the perfect, unfettered government, and attracts those, in whom the one-sided love of liberty is strong. Anarchism is like a well-ordered household, where there is a "sharing of sorrows and joys." This is *philosophical anarchism*.

### Criticism.

The Anarchist is mistaken in thinking that liberty is the greatest of all political goods. Liberty is not an end in itself, but a means to an end. It is wrong to think that State action destroys moral value, but if the State is properly organised, it will help the individual to lead a moral life. If the State is nothing else but the individuals themselves in another capacity, the authority of the State cannot be external. Individuals, on the other hand, have not attained that stage, where they do not require

the State-organization and establish "the perfect household." Too much reliance cannot be put on individual conscience, and the Anarchist is misguided if he thinks that the only authority that is to be recognised is the authority of individual conscience.

### Individualism.

The Individualistic theory is also known as *Laissez-faire*, meaning 'let alone.' According to this theory, the individual should be restrained as little as possible by government. The motto, therefore, is "minimum possible State-action and maximum possible individual freedom." Government is a necessary evil. Government is an evil in itself, no doubt, but it is necessary for mankind. It is necessary on account of man's selfishness. The State is necessary to suppress violence and fraud. The action of the State should be confined to the protection of the individual, beyond that the individual should be left alone. The State can interfere with the liberty of the individual, when his self-protection is involved. But, there is no justification of State-action, when the good of the individual is alone concerned. According to Mill, "Over himself, over his body and mind, the individual is sovereign."

### State--a Necessary Evil.

The legitimate functions of the State, according to the Individualist, are protective by nature. For this purpose, every State is required to keep an army and navy, police and law courts. The State and the individual are to be protected from foreign aggression. An individual is to be protected from the encroachments of other individuals, and his property should be secure and safe. The individual is to be protected against false contracts or breach of contracts. The State should protect the unfit and save individuals from preventable ailments: this condition is not, however, accepted by extreme Individualists like Spencer and others. Thus, an extreme form of Individualism is Anarchism.

### The Basis of Individualism.

Individualism has been supported from three different points of view: ethical, economic and scientific.

The ethical argument is that the end of man is the harmonious development of all his faculties. For the realisation of this end, man requires the greatest possible scope, which is marred by competition. If the interference of

government exceeds bounds, it destroys individual liberty.

From the economic point of view, the individual is self-interested. He should, therefore, be allowed to seek his own interests in his own way. Society as a whole will be the gainer.

The scientific argument is that struggle for existence and survival of the fittest constitute the law of nature. The operation of this law is necessary in the interests of social well-being.

It is a matter of common experience that whatever the government does, it does badly. According to Spencer, governments make and unmake the laws all the time which shows that many of those laws should not at all be enacted. Administration of law is also troublesome. The existence of the State, thus, proves the imperfectness of the individual. If individuals were perfect, there would have been no State at all.

### Criticism.

The complex condition of society demands interference on the part of the State. If the external conditions governing good life are badly organised, it becomes difficult for the



individual to act, Individual welfare and social welfare are not opposed to each other. State-control is, therefore, not an evil, but a positive good.

Man is not always self-seeking. Even if he is self-seeking, it is not true that he always knows his interest best. The State possessing a vaster experience may very well act as a better judge.

It is difficult to define the word "fittest." It is a relative term. What is applicable to animals may not be applicable to men. Man does not always struggle for oneself, but for others also.

The chief merit of Individualism lies in the fact that governmental power, if exercised to unnecessary limits, does lessen self-help. It emphasises self-reliance, by counteracting needless governmental interference, and urges the value of the individual in society

### Socialism.

"The World War calling for an intense national patriotism in every country," says Davis, "seriously affected the further rise of Socialism." What is Socialism then? Socialism is opposed to Individualism. It regards govern-

mental control as essential to the welfare of the individual and society. Government is not an evil, but a positive good, and is directed to secure better economic conditions. Socialism, thus, believes in the State-control of the means of production and distribution. The Socialist is not opposed to capital as such, but to capital in private hands. Capital should be socialised and be used for the benefit of all, not for the good of a few only. Modern Socialism, therefore, believes in the substitution of State-ownership of the basic instruments of production and distribution for private ownership. Individual freedom and welfare can be better secured through State-action. Socialism aims at the progressive nationalisation of industries with a view to the progressive equalisation of income. Modern Socialism is best defined as "the political movement of the working classes, which aims to abolish exploitation by a collective ownership and democratic management of the basic instruments of production and distribution." It includes several aspects: a criticism of the existing capitalistic society, a philosophy of social progress, a theory about the future ideal State and a definite political movement to attain the goal.

### The Present Economic Structure.

Under the present industrial system, the labourer does not receive the fruits of his labour. It favours the rich. Land and mineral wealth are gifts of Nature, and as such should not belong to the few but to all.

The present structure leads to enormous wastage of labour and energy. On account of unrestricted competition there is unemployment, lower wages, over-production and cheap goods. The State should, therefore, abolish competition and substitute cooperation.

The present day system is materialistic; there is unfairness throughout, dishonesty everywhere and a general lowering of character. Socialism, it is argued, would produce a better type of individual character.

### The Scheme of Reform.

Socialism aims at the reduction of the disorder, characteristic of the present economic order by means of State-ownership and management of the basic instruments of production and distribution. There is at present a waste of material goods and of human resources. This will be much diminished, as there will be no

competition. It will further remove poverty, and offer work for all. There will be better opportunities for choice of work. Every body will have leisure, and, thus, create a physically and morally healthy society.

### Criticism.

It is said that Socialism will lead to authoritarianism. Instead of private business, there will be government-control, and everybody would become a State employee. State officials will exercise great powers and every person will be subject to their authority.

Socialism is a raid of the 'have-nots' against the 'haves.' It believes in class-war.

Under Socialism, there will be no incentive to work. Efficiency of production would decrease, and the total output would also be less.

Large-scale industry cannot be organised on a State-basis. The State cannot take over so much work and do it efficiently.

Socialism is a process of levelling down: everybody would be poor and miserable.

Private property offers an opportunity for the individual to develop his best self. What

the individual wants is free development, which is not possible under State-control.

It may, however, be concluded by saying that Socialism has done a good deal towards securing higher wages, reducing hours of work and improving factory conditions. It has further forced upon the attention of the world the urgent need for social justice. Political democracy is meaningless without an improvement in the social and economic structure of human society.

### Communism.

The master of the Russian Revolution was Lenin. He advocated revolution in the realisation of Communism. Thus, he says, "In Capitalist Society we have a democracy that is curtailed uselessly—a democracy only for the rich, for the minority." The dictatorship of the *proletariate* is bound to arise during the transition from Capitalism to Communism. This will be marked by a "suppression of the minority of exploiters by the majority of the exploited." "Only under Communism will the State become quite unnecessary, for there would be no one to suppress—'no one', in the sense of a *class*, in the sense of a systematic struggle

with a definite section of the population."

### Socialism and Communism.

Socialism, says Lenin, is the first phase of the Communistic Society. In this stage, *Bourgeois* justice is not abolished in its entirety, but only in part, only in proportion to the economic transformation so far attained i. e., only in respect of the means of production." Communism is evolved out of Capitalism. The final phase of Capitalism is Imperialism. There is the dictatorship of the *proletariate* in the period of transition from Capitalism to Socialism. For the complete extinction of the State, complete Communism is necessary. According to the Communist, "while the State exists, there can be no freedom. Where there is freedom, there will be no State." The State will be able to wither away completely when society has realised the formula from 'each according to his ability, to each according to his needs' There will be an administrative machine but not a "State."

The difference between the Socialist and the Communist is one of *method* and not of final objective. The Communist wants a sharp and absolute change in the present order and a fresh beginning altogether. The Russian Revolu-

tion is considered by the Communists as a fragment of the world revolution, without the accomplishment of which Communism is in constant danger from the Capitalist States.

### The U. S. S. R.

What is the chief incentive to production in Russia? Stalin answered that while under Capitalism, the worker regards the factory as a prison, under the Soviet System the workers regard the factory as something near and dear to them and in the development and improvement of which they are vitally interested. The resources from industry in Russia are employed not to enrich individuals, but for the further expansion of industry, for the improvement of the material and cultural conditions of the working classes. The U. S. S. R. neither conducts nor recognises colonial policy. Representation in the Soviet Union depends on occupation rather than territory—"not one man one vote, but one worker one vote." In Russia, organised religious instruction is prohibited.

### Idealism.

The theory of Idealism may be traced to the writings of Greek political thinkers, specially of Plato. Rousseau was the first modern writer on the subject, whose thoughts profoundly influ-

enced some of the Continental writers particularly Kant. From the time of Kant we have a systematic development of the Idealistic theory of the State. There were two schools: the German Idealists—Kant, Fichte and Hegel and English Idealists—Green, Bradley and Bosanquet.

#### The German and English Theorists.

The German Idealist, specially Hegel exalts the State to a mystical height. He glorifies the State at the expense of the individual and says that the State has a mind, will and unity, different from and superior to the mind, will and unity of the individual member comprising the State. The Hegelian theory results in State absolutism.

Among English Idealists, Bosanquet comes closer to Hegel, but does not go to that extreme. The English Idealists generally do not exalt or glorify the State. No doubt, they take a very high view of the State, yet, limit the sphere of state-action.

#### Meaning of the Theory.

The Idealist does not make a distinction between the State and society. To the Idealist, the State is an ethical institution. As Bosanquet observes, "Institutions like the State are



embodiments of ethical ideas." The State is a natural and necessary institution. It is natural in the sense that organizing capacity is implanted in human nature. It is necessary, because, without it man cannot reach the highest possible perfection.

The end of the State and that of the individual is the same. It is the fullest and freest development of individual faculties. There is no such thing as the individual versus the State. The supreme right of every individual is to become what he has in him to become. It is a right of self-development and self-realisation. The highest type of good is a moral good; the highest end of man is his moral perfection.

The Idealists emphasise *will* as the basis of the State. Political authority does not rest on sheer force, but the general consent or general will of the people. T. H. Green remarks, "Will, not force, is the basis of the State" Democracy is the most natural form in which the idea of *will* expresses itself.

The end of the State and of the individual, as noted above, is the growth and development of human personality. This end is of such a personal and inward character that it

cannot be directly promoted by the State. It is to be earned by one's own efforts. What a State can do and should do is to remove obstacles in the way of good life or to hinder hindrances to good life. The State can regulate external conditions or circumstances, which determine or influence good life. The State, in short, cannot enforce morality directly, but can do it indirectly by making it possible for the individual to become moral.

The essence of the State is its sovereignty. Sovereignty is maintained through coercion or control. If each individual is to enjoy freedom of self-development, it is absolutely necessary that restraints should be placed on the freedom of each. Liberty without licence is possible.

The State exists to maintain such conditions of life as are necessary for man's good life. Social organization is essential to the perfection of the individual life. The Idealist, therefore, gives a very high place to a system of rights. Rights are the means by which man's personality can express itself; they are the outer conditions necessary for man's inner development. Therefore, the State is not an end in itself, but a means to an end.



